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REPORT ON OTHER MEETINGS AND ACTIVITIES

Note by the Secretariat

Contribution by the Council of Europe

1. The attention of the Preparatory Committee is drawn to the contribution entitled "Human Rights at the Dawn of the 21st Century" presented by the Council of Europe. This contribution is composed of two documents: the first, attached to the present note, is the report of the interregional meeting organized by the Council of Europe at Strasbourg from 28 to 30 January 1993 with a view to the World Conference on Human Rights. The two themes of the meeting were as follows: (a) Implementation of human rights, including the prevention of human rights violations; and (b) Democracy, development and human rights. The second document, which will be circulated under the symbol A/CONF.157/PC/66/Add.1, comprises the communications introducing the six subthemes of the meeting.

2. In her covering letter of 5 April 1993 addressed to the Assistant Secretary-General for Human Rights, the Secretary General of the Council of Europe drew the particular attention of delegations to chapter III of the report, entitled "other issues raised", which deals with the question of participation in the World Conference by non-governmental organizations in Western, Central and Eastern Europe. She expressed the hope that the problem would be satisfactorily resolved at the fourth session of the Preparatory Committee.

Council of Europe
Conseil de l'Europe

Strasbourg, 25 March 1993

"Human Rights at the Dawn of the 21st Century"

REPORT

from the

Interregional meeting organised by the Council of Europe in advance of the World Conference on Human Rights

Palais de l'Europe, Strasbourg, 28-30 January, 1993

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(C): Ian Martin, *Promotion of Human Rights and Prevention of Human Rights Violations*

2(A): Philip Alston, *The Importance of the Inter-play between Economic, Social and Cultural Rights and Civil and Political Rights*

(B): Neelan Tiruchelvam, *Development and the Protection of Human Rights*

(C): Madeleine Ramaholimihaso, *Democracy, Development and Human Rights*

INTRODUCTION

The Council of Europe decided it could most usefully contribute to the preparations for the June 1993 World Conference on Human Rights by facilitating a cross-regional dialogue on some key human rights issues of current concern. A meeting was convened which drew on the expertise of prominent individuals from all regions of the world. Designed to be strictly substantive, the aim of the meeting was not to produce a regional platform, nor resolutions on the matters addressed, but to provide a forum for a straightforward exchange of views.

The twin themes chosen for discussion were:

(1) Implementation of human rights, including the prevention of human rights violations; and

(2) Democracy, development and human rights.

Discussions were designed to be forward-looking, self-critical and action-oriented, to identify current deficiencies in human rights protection generally, including in Europe, and ways in which these can be remedied. The central question posed was what we can do -- governments, inter-governmental organisations and non-governmental organisations -- to improve and strengthen respect for human rights in the coming years.

The meeting took place at the Palais de l'Europe in Strasbourg, France, from 28-30 January 1993 and was attended by over 350 participants. These included representatives of the member States of the Council of Europe, those participating in the CSCE process and in the Western European and Others Group at the United Nations, as well as other Member States of the United Nations. Invitations were also extended to ombudsmen and national human rights institutions, to representatives of universal and regional organisations and to non-governmental organisations working for the promotion and protection of human rights. Some 40 independent experts with long experience in working for the respect of human rights were invited to play a central role in the discussions.

ORGANISATION OF WORK

The two main themes of the meeting were broken down into six separate, though sometimes overlapping, areas for discussion. An introductory paper was presented in Plenary session on each of these six sub-themes by an independent expert. These papers are reproduced in an addendum to this report. A discussion group, composed equally of governmental and non-governmental representatives, was then convened to examine each of these six sub-themes.

The six areas thus covered were as follows:

THEME 1: "Implementation of Human Rights, including the prevention of human rights violations"

(A) Domestic institutions and action as the primary means of implementation

Introduction by : Ms. Tanja Petovar
Discussion group Chairman: Mr. Albert Weitzel
Rapporteur: Mr. Justice Walter Tarnopolsky

(B) The role and functioning of international machinery

Introduction by : Dr. Rodolfo Mattarollo
Discussion group Chairman: Ms Tricia Feeney
Rapporteur: Professor Theo van Boven

(C) Promotion of human rights and prevention of human rights violations

Introduction by : Mr. Ian Martin
Discussion group Chairman: Ambassador Henrik Amneus
Rapporteur: Ms. Hina Jilani

THEME 2: "Democracy, development and human rights"

(A) Importance of the inter-play between economic, social and cultural rights and civil and political rights

Introduction by : Professor Philip Alston
Discussion group Chairman: Professor Zdislaw Kedzia
Rapporteur: Professor Virginia Leary

(B) The place of development in the protection of human rights

Introduction by : Dr. Neelan Tiruchelvam
Discussion group Chairman: Maitre Bacre Waly Ndiaye
Rapporteur: Mr. Johannes Van Der Klaauw

(C) Relationship between human rights, democracy and development

Introduction by : Ms Madeleine Ramaholimihaso
Discussion group Chairman: Ambassador Stéphane Hessel
Rapporteur: Dr. Michael F. Czerny, S.J.

Each discussion group met for two sessions. On the final day, the rapporteurs presented reports of the discussions in Plenary session. Following responses to the reports, the General Rapporteur, Mary Robinson, President of Ireland, presented the informal conclusions of the meeting, drawing together the major points that had emerged during the discussions.

The current report contains: (I) the introductory statement of the Secretary General of the Council of Europe; (II) reports of the discussion groups; (III) other issues raised; (IV) the informal conclusions of the General Rapporteur. A list of participants is given in Appendix 1. The texts of the introductory presentations are reproduced in an Addendum to this report.

I. OPENING STATEMENT BY CATHERINE LALUMIERE, SECRETARY GENERAL OF THE COUNCIL OF EUROPE

WHY THIS INTERREGIONAL MEETING ORGANISED BY THE COUNCIL OF EUROPE?

The Council of Europe, founded after the horrors of the second world war and dedicated above all to the protection and development of pluralist democracy, the rule of law and human rights, wishes to share these values and its experience with other parts of the world. For several decades these values have been proclaimed as being those of the whole international community. We do not regard human rights as a privilege or luxury reserved for Europe. Even though the Council of Europe may boast several important achievements in the field of human rights, we are not approaching this interregional meeting or the World Conference in a spirit of self-satisfaction but in a spirit of constructive criticism (and self-criticism).

We hope that this meeting will be marked by the "genius loci", by what constitutes the host organisation's specific characteristics, namely a spirit of openness and dialogue and a firm adherence to principles. One characteristic does not preclude the other; indeed, it is from firm banks that bridges can be built. In the interests of openness and dialogue, as well as because the individual and his or her inalienable rights and dignity are at the centre of our concerns, we were anxious that this meeting should involve individuals and non-governmental organisations engaged in the ongoing and, hence, ever necessary struggle for human rights.

During this meeting and at the World Conference, the aims will be:

- to make an uncompromising assessment of what has been achieved with regard to the protection and promotion of human rights,
- to identify the challenges and threats confronting human rights at the end of 20th century,
- to work out the main lines of future action.

1. ASSESSMENT

The state of the world in this early part of 1993 scarcely justifies a euphoric assessment of what the international community has succeeded in doing to ensure respect for human rights. And yet the upheavals that have occurred since 1989, especially in Europe, gave rise to an immense hope. There were many of us who thought that human rights, having ceased to be a factor for division and a subject of ideological controversies between the West and the East, would become a powerful catalyst for the unity of *all* Europe and even of the world. Since then this great surge of hope has largely subsided and given way to disillusion and resignation.

The Preamble to the Universal Declaration of Human Rights, drafted in the wake of the second world war, states that "disregard and contempt for human rights have resulted in barbarous acts which outraged the conscience of mankind". "Never again" - that was the leitmotiv which guided efforts to secure human rights on an international scale. More than 40 years later, however, despite all the legal instruments and machinery set up for that purpose, disregard and contempt for human rights are still resulting in barbarous acts which outrage the conscience of mankind - including in Europe, a few hundred miles from here, in the former Yugoslavia, especially in Bosnia-Herzegovina. The return of the monstrous concept of "ethnic cleansing" and the atrocious crimes in which its implementation is resulting demonstrate that the barbarity of the Nazi era and its underlying doctrines are still alive.

Neither in the former Yugoslavia nor in other parts of the world had the international community succeeded in preventing widespread abuses of human rights. Even the most elementary rights, such as the right to life or the right not to be subjected to torture, are but an unkept fine-sounding promise for millions of "members of the human family".

We should not, of course, belittle or denigrate the efforts made since 1945 to place the individual and his or her dignity and rights at the centre of the international community. Substantial progress has been made, including - indeed, perhaps above all - in the framework of the Council of Europe. The case law of the European Commission and Court of Human Rights is exerting an ever deeper influence on the laws and social realities of the states which are parties to the European Convention on Human Rights. But even the system established by the Convention, often held up as the most advanced one of its kind, is not free from weaknesses, of which I shall mention but four:

- the system's relative impotence vis-à-vis serious, systematic abuses of human rights in the Convention's contracting states, which contrasts with the rather lavish amount of detail and care with which fairly minor problems are sometimes tackled by the Convention's organs;

- the relative facility with which the Convention's contracting states may avail themselves of the right of derogation in "exceptional" situations and keep those derogations in force for prolonged periods until such time as the Convention's organs have an opportunity to decide whether or not they are compatible with the Convention;

- the excessive length of the procedure before the Convention's organs, which are increasingly victims of their own success; hence the urgent need for a radical reform of the system, which is less and less appropriate to current requirements;

- the system's insufficiently judicial nature in view of the fact that the Committee of Ministers, a political organ, may be called upon to decide on breaches of the Convention.

Among the positive effects of the system set up by the European Convention on Human Rights, it would be wrong to underestimate the preventive effect. This important idea of preventing abuses of human rights has been taken further in relation to one particularly

scandalous type of abuse, namely torture and inhuman or degrading treatment. The European Convention for the Prevention of Torture, settled in 1989, is undoubtedly one of our most important achievements. The procedure it has established for visiting places of detention has proved its worth. At the same time, the investigations conducted by the European Committee for the Prevention of Torture show that further efforts are still necessary in order to rid the European scene of the insult to human dignity which torture and inhuman or degrading treatment constitute.

2. CHALLENGES AND THREATS

What Alexis de Tocqueville said about democracy - namely that it is constantly threatened - is, of course, also true of human rights.

Human rights are invariably asserted and defended in relation to power, not only the power of the state, but all power, be it political, economic, social, military, media-based, scientific, technological or even spiritual. Any exercise of power is accompanied by a temptation to abuse it. The fact is that human rights are designed to limit power, circumscribe its exercise and attenuate its violence. Human rights counterbalance a utilitarian view of power with an ethical requirement setting a limit to power. In a world where power centres are shifting, our concern for human rights should involve us in a constant search for sources of domination.

As the 20th century draws to a close, human rights in the world are confronted with many serious challenges and threats, including - to mention but a few - war and violence, hunger and poverty, unfair distribution of wealth in the world and within our societies, aggressive nationalism, intolerance, racism, anti-semitism, xenophobia and religious fanaticism and fundamentalism.

Human rights should not be regarded as a kind of miraculous cure for all the world's ills. It nevertheless seems possible, indeed necessary, for the phenomena just mentioned to be approached from the standpoint of human rights as well. Perhaps their persistence or resurgence is due, amongst other things, to the fact that human rights and the fundamental principles underlying them are being rejected or insufficiently practised and applied, if indeed at all. I should like to emphasise three of these fundamental principles, namely universality, indivisibility and solidarity.

The whole human rights edifice is founded on the principle of the equal dignity of all human beings. The logical and inescapable consequence of this principle is what we call the universality of human rights. These are essentially rights belonging to all human beings, to every woman, man and child, wherever they live on this earth. No individual, group, country or region in the world should be denied the enjoyment of human rights.

But how do things stand in reality? Are the human rights proclaimed as universal actually and equally available to all? Whereas the Universal Declaration of Human Rights and, in its wake, all the major international treaties on human rights proclaim the right of every individual to life as a fundamental right, thousands of people - including some

40,000 children - die of hunger and malnutrition every day. And how many others die as a result of war and violence?

Even in our European societies many human beings are still denied full and effective enjoyment of human rights, such as the poor, foreigners and so on.

This fundamental principle of the universality of human rights is not only inadequately practised and applied; it is also openly disputed, even rejected, by certain movements advocating cultural relativism in the human rights field. According to them, the cultural, social or religious context gives rise to different and yet equally valid conceptions of human rights. In 1981 the Swiss philosopher Jeanne Hersch wrote the following in an article entitled "Is the concept of human rights a universal concept?": "... in a vivid, diffuse and deeply felt form, there is in all individuals and all cultures a need, an expectation and a sense of these rights ... The main point is that this fundamental requirement is perceptible everywhere: something is due to the human being simply because he is a human being ... To advance the diversity of cultures as a reason for refusing to recognise the universality of human rights can only be a very poor pretext."

It is true that human rights are designed to protect not only an abstract individual but also individuals in concrete situations (accused persons, workers etc) and individuals as members of groups or communities. In other cultures which are different on this point to western culture, there is probably a greater awareness of the links existing between individuals and groups or communities. Now that the ideological confrontation between the West and the East is largely a thing of the past, the time has perhaps come to adopt a more dispassionate approach to the relationship between "individual rights" and "collective rights".

A right may be "collective" by virtue of the way in which it is exercised or by virtue of its holder. There are rights and freedoms (already guaranteed, incidentally, by the major international treaties on human rights) that presuppose the existence of other individuals, groups and communities with which and within which they are exercised. Mention may be made, by way of example, of freedom of religion (Article 9 of the European Convention on Human Rights refers to "freedom, either alone or in community with others ..., to manifest his religion or belief"), freedom of assembly, freedom of association, the right to organise and the right to free elections. These are rights with a collective dimension by virtue of the way in which they are exercised.

Another distinguishing factor is the holder of a right. Whereas individual rights are rights of human beings considered in their individual essence, collective rights construed in this sense would be rights of groups or of communities which group individuals together. Naturally, there arise the questions: What rights? And what groups?

Is it possible to accept the existence of human rights in the form of group rights? Perhaps the recognition of certain group rights is essential for the self-fulfilment of the individual as a social being and for the achievement of an effective and genuine universality of human rights as rights of each and every individual without exception.

However, there still remains the question "What groups?" We are probably agreed in according certain rights to certain "natural" groups, such as the family which is the "natural"

group par excellence. But where does the concept "natural" end? And what about "human rights", minorities, nations, peoples and even states?

I should like to make it quite clear straight away that I cannot conceive of States possessing human rights.

But is it not true that even the idea of a nation or a people possessing human rights fills us with a kind of instinctive distrust? Is this not because these concepts have been and are still being "hijacked" and abused? We all know to what extent the right of a people or a nation has been played off against individual rights, the community against the individual. In Nazi doctrine, with its glorification of the "Volksgemeinschaft" (community of the people), there was no room for human rights, and eminent professors of law who were zealous acolytes of the regime felt able to announce triumphantly the death of personal rights or human rights. Shall we ever forget Adolf Hitler's terrible, blasphemous declaration that adorned the main gate of the sinister concentration camp of Buchenwald: "Mein Volk ist mein Gott" ("My people is my god")?

For many of those who set themselves up as protagonists of the rights of peoples, the term "people" is synonymous with "state". In that way they succeed in transforming human rights, via so-called rights of peoples, into rights of the state: rights of the state valid vis-à-vis the individual, instead of human rights valid vis-à-vis the state.

"Collective" rights and individual human rights are both complementary and mutually exclusive. They are complementary because an individual cannot be free if he lives in an oppressed group or population. But the two categories of rights may also be mutually exclusive, for how can the conflicts that are always possible between them be settled?

Like Professor Rivéro, I believe it necessary to assume that the individual cannot and should not simply be reduced to his social environment. According to Professor Rivéro, "to recognise the rights of groups is to maintain that such rights must be capable of performing their function for the individual's benefit if the individual is to be a full human being. The rights of groups are nothing else than the right of the individual to receive from groups the means he needs for his self-fulfilment ... Since the group derives its own rights from serving the individuals who compose it, it has no rights against the rights of the individual. In the hierarchy necessitated by the plurality of persons, the individual takes precedence over the group, and the groups themselves can organise themselves only according to the closeness of their relationship with the individual".

Another fundamental principle is the indivisibility of human rights. These rights form an indivisible whole, whether they be civil, political, economic, social or cultural rights. Only if the individual is guaranteed all these rights can he live in dignity. The Universal Declaration of Human Rights announced a twofold liberation to individuals: liberation from terror and liberation from poverty.

It might have been hoped that the end of the ideological confrontation between West and East had put a stop to the meaningless debates of yesteryear in which economic, social and cultural rights were played off against civil and political rights and vice versa. Alas, this is not quite the case. Some are preaching a new determinism, a kind of inverted Marxism,

which claims that market freedom and economic freedom are both the necessary and the sufficient condition of all freedom and of the enjoyment of human rights. The experience of some of the world's regions and countries shows how misguided these doctrines are.

Even those who profess the indivisibility of human rights do not always go to the end of their reasoning. Thus we in the Council of Europe have advanced less far along the path of "social democracy" than along that of "political democracy", to borrow the expressions used as long ago as 1949 by Pierre-Henry Teitgen, one of the fathers of the European Convention on Human Rights. The European Social Charter, a legal instrument concluded in the Council of Europe in 1961, has still not been ratified by all of the Council's member States; it affords less effective protection than the European Convention on Human Rights. Hence the great importance of the efforts made in recent years to give a fresh impetus to the European Social Charter, often described as the pendant to the European Convention on Human Rights but in fact a poor relative, even a paper tiger.

Lastly, there is the principle of solidarity. The main international texts on human rights emphatically proclaim the pre-eminence of the individual at the heart of the international community responsible for the joint and collective protection of the rights of the human being. Safeguarding those rights is not only a legitimate concern but one of the principal tasks of the international community.

This solidarity should be expressed at all levels of social life, in all the communities to which we belong, at both national and international level.

Thus it is essential - above all, perhaps, in our western societies - to transcend an essentially egoistic, individualistic and acquisitive approach to human rights. These are not only rights of each and every one us; they are above all the rights of others. It is in our encounters with others and with "otherness" that we discover and respect the individual and his or her dignity and rights. Human rights cannot exist without solidarity between individuals.

Certain phenomena of our time, such as the various forms of intolerance, racism and religious fanaticism, represent a serious threat to human rights and to the peace of our national and international society. Perhaps they are rooted in a twofold rejection: rejection of all that is universal in man and mankind and rejection of others, of otherness and of differences.

3. MAIN LINES OF FUTURE ACTION

What should be done in the face of the multitude of threats and challenges with which human rights are confronted? How can we ensure that respect for such rights becomes a reality, so that they are more than a mirage, a fine-sounding promise whose fulfilment is constantly postponed?

I hope that this meeting and the World Conference on Human Rights will provide valid answers to these questions and that words will be followed by deeds.

The two themes chosen for this meeting suggest some avenues for future thinking and action.

First of all, after so many proclamations, declarations and conventions have been issued on the subject of human rights, stress should be laid on their implementation. This will mean not only remedying abuses of human rights but above all preventing them. This process of implementation and prevention should be conducted primarily at national level. The international machinery, set up for the purpose, important though it is, can play but a subsidiary role.

The state should be the principal custodian of human rights; its role is to respect and enforce those rights. But experience teaches us that it can be not only the protector but also the gravedigger of human rights. It was because the state has often failed in its role as custodian of human rights and been transformed into an instrument of oppression that the international community was given a watching brief over the behaviour of states. These can no longer shelter behind the cosy screen of non-interference. Human rights have ceased to belong to the domain of "domestic affairs". Respect for human rights is a duty of every state, not only towards its people but also towards the international community.

At the same time, the international community should equip itself with infinitely more effective means for playing this role, even though a subsidiary one, of implementing human rights and preventing their abuse. Human rights should be a fundamental part of all efforts aimed at the maintenance and consolidation of peace, preventive diplomacy and early warning. For we know - as the Preambles to the Universal Declaration and European Convention on Human Rights remind us - that there can be no peace without respect for human rights. We should no doubt reflect in greater depth on the relationship between human rights, on the one hand, and peace or violence, on the other. It was not by chance that the great proclamations of human rights were made against a background of violence - a violence they seek to exorcise and curb. National and international systems for protecting human rights are also - and, indeed, should be - means of preventing and peacefully settling conflicts.

It may be observed that within the United Nations the concept of threat to international peace and security is being broadened. Should it not include widespread abuses of human rights? In that case there arises the serious question of the possible exercise of a "right of interference" and the possible use of force. Pascal wrote "Justice without force is impotent: force without justice is tyrannical. Justice without force is contested, because there are always wicked people; force without justice is accused. It is therefore necessary to bring justice and force together; and, for that purpose, to ensure that whatever is just is strong or that whatever is strong is just!". Here is an excellent motto. It seems obvious to me that if a "right of interference" was to be exercised and force used, this could be done only in full accordance with the international community's rules of law and in a just and balanced manner. If there were double standards in the matter, the international community's credibility would be seriously impaired. As regards humanitarian action, the need for which is denied by no one, it ought not to cover up the international community's political fecklessness or serve as a screen behind which some carry on with impunity their crimes against peace and human rights.

Another important and necessary way of preventing abuses of human rights is to punish those who are responsible for them. In other words, it is essential to put an end to the impunity that is, alas, a virtually universal phenomenon. There already exist rules of international law enabling the perpetrators of the atrocious crimes at present being committed to be prosecuted. Thus Article 5 of the United Nations Convention against Torture enshrines the principle of international jurisdiction in respect of the crime of torture. Under the Geneva Conventions, states have an *obligation* to prosecute war criminals wherever they may be - if appropriate, in their own courts. The First Protocol to the 1977 Geneva Conventions instituted a fact-finding commission to which allegations of war crimes may be referred. If the legal facilities already available are not used and if, in the space of more than 45 years, the United Nations has not been able to set up an international criminal court, this is no doubt evidence of a lack of political will on the part of the governments concerned. The atrocious crimes committed on the soil of the former Yugoslavia, especially in Bosnia-Herzegovina, emphasise the urgent need for rapid and effective international action. Thinking along these lines is also under way within the CSCE. Whatever institutional framework is eventually chosen is of little importance provided words are at last followed by deeds. For my part, I believe that, where necessary, the Council of Europe should be available to serve as an institutional framework for such action aimed at finally breaking the shameful circle of impunity. Here is a subject that should not be evaded at the World Conference on Human Rights.

Lastly, education is without doubt a powerful means of preventing abuses of human rights. In this connection, a huge effort is necessary to create in our societies a genuine human rights culture.

The second theme chosen for this meeting should enable the relationship between democracy, development and human rights to be investigated more thoroughly. This is a matter of paramount importance. Within the Council of Europe we have paid more attention to the strong links between democracy and human rights than to those which exist, or should exist, between these two concepts and that of development.

I consider it important to emphasise at the outset that under-development, hunger and poverty are abuses of the fundamental rights of those afflicted by them; these might be said to be structural violations of human rights. They are a vivid and practical demonstration of the relativity of the distinction between civil and political rights, on the one hand, and economic, social and cultural rights, on the other - or, in other words, of the reality of what we call the indivisibility of all these rights. People living in poverty are in danger of being denied almost all fundamental rights. What does freedom of expression, for example, mean to those who have no voice and who live in extreme poverty, even in our affluent societies or rather on their fringes? What does the right to family life mean to impoverished, divided families whose children are separated from them solely for economic reasons?

In saying this, I am not, of course, subscribing to the views of those who use poverty and under-development as a pretext for postponing the enjoyment of human rights.

Under-development or the goal of development should not serve as an excuse for those who abuse human rights. It was a great African jurist, Kéba M'Baye, one of the first to moot

the concept of the right to development, who exclaimed: "Development, how many crimes have been and are being committed in your name!".

Any form of development worthy of the name should also be a development of democracy and human rights. Killing, torture and repression are not, of course, means of economic development. Respect for human rights does not preclude development but fosters it. The international community should integrate the "human rights" dimension into development strategies.

Whether they are concerned with implementing human rights or with promoting development in accordance with those rights, the role of non-governmental organisations is, of course, of paramount importance. The breakthrough achieved by these organisations and the growing impact they are having are, in my view, one of the most encouraging aspects of recent decades. They have practical experience of the solidarity existing between individuals in the protection of human rights. It is largely thanks to them that what is called the international community is becoming rather more like a community of people instead of being exclusively a community of states and "reason of state". It was Michel Foucault who said:

> "The misfortune of people should never be a silent act of politics. It creates an absolute right to rise up and appeal to those who hold power".

In referring to the action of NGOs, he spoke of "this new right: that of private individuals to intervene effectively in the system of international policies and strategies".

I sincerely hope that this interregional meeting and the World Conference to whose preparation it is intended to contribute will not only be an occasion for incantatory speeches but will also come to be regarded as important stages in the combat for the effective implementation of human rights for all individuals, of all human rights in their universality and indivisibility.

CONCLUSION

To conclude on a note of solidarity, I should like to lend my voice to someone whose voice is at present stifled because she is a living symbol of the eternal and universal combat against oppression and for human rights, Aung San Suu Kyi. She has been detained without a trial since July 1989 in her country, Burma, where she conducted a courageous campaign in favour of human rights. Her political party won a clear victory in the May 1990 elections. The military regime at present in power is refusing to release her. Her commitment to the non-violent struggle for human rights earned her the Nobel Peace Prize in 1991. In transmitting this message from Asia, I issue an appeal to the Burmese authorities to restore to Aung San Suu Kyi her freedom and her rights. Here is what she wrote under the title of "Freedom from Fear":

> "It is not easy for a people conditioned by fear under the iron rule of the principle that might is right to free themselves from the enervating miasma of fear. Yet even under the most crushing state machinery courage rises up again and again, for fear is not the natural state of civilised man.

The wellspring of courage and endurance in the face of unbridled power is generally a firm belief in the sanctity of ethical principles combined with a historical sense that despite all setbacks the condition of man is set on an ultimate course for both spiritual and material advancement. It is his capacity for self-improvement which most distinguishes man from the mere brute. At the root of human responsibility is the concept of perfection, the urge to achieve it, the intelligence to find a path towards it, and the will to follow that path if not to the end at least to the distance needed to rise above individual limitations and environmental impediments. It is man's vision of a world fit for rational, civilised humanity which leads him to dare and to suffer to build societies free from want and fear. Concepts such as truth, justice and compassion cannot be dismissed as trite when these are often the only bulwarks which stand against ruthless power."

* * *

II. REPORTS FROM THE DISCUSSION GROUPS

THEME 1: IMPLEMENTATION OF HUMAN RIGHTS, INCLUDING THE PREVENTION OF HUMAN RIGHTS VIOLATIONS

A. Domestic institutions and action as the primary means of implementation of human rights

Rapporteur : Mr. Justice Walter Tarnopolsky

For at least four reasons the primary responsibility for the realisation of human rights must rest with national domestic institutions, laws and practices.

(1) There are many different country situations to consider when looking at the level of protection of human rights. For our purposes we can identify three, from the most favourable to the least favourable:

(a) those countries which have a pluralistic, democratically and periodically elected legislature; an independent judiciary; the prevalence of the rule of law; a high degree of equality between men and women, between racial, ethnic, linguistic and religious groups; a commitment to providing support to those who have some form of personal disability or are economically or socially disadvantaged;

(b) those countries in transition to such a pluralistic democracy from a dictatorship or from apartheid or anarchy;

(c) those countries which have an authoritarian regime or those with a very weak or non-existent governmental structure.

(2) Without good faith acceptance of human rights norms by governments, and without a citizenship which trusts its government and participates in its own governance on a continuous basis, the implementation of internationally established human rights norms can be sabotaged, or at least will be largely unrealised.

(3) Establishment of human rights involves protection of and sometimes even provision for: minorities of various kinds, the disadvantaged, dissenters, and those who come before the various organs involved in the administration of justice.

(4) Direct international implementation of acceptable human rights standards - as opposed to international monitoring and supervision, which are desirable and needed - would probably amount to an unacceptable level of intrusion into the domestic sovereignty of the state concerned.

Keeping in mind the three types of situation described above, and realising that the needs of human rights implementation will vary between them, consideration was given to

what is necessary for a rising level of attainment, from the basic to the more developed:

(1) International and regional human rights standards must be implemented either by direct incorporation into the country's laws and the constitution, or by legislative or other measures, of at least the following:

(a) a pluralistic democracy (as described earlier);

(b) a judiciary independent from the legislative and executive branches of government, having jurisdiction to review legislative and administrative acts in order to enforce human rights norms having basic or constitutional status;

(c) additional institutions, like the office of ombudsman, having a high degree of autonomy to supervise and promote fair and impartial treatment from governments, and non-discriminatory treatment by governments and government agencies, private individuals and corporations.

(2) The international and regional human rights commitments of a country should be publicised throughout the educational system, from the primary level to universities, adult education and professional training; through co-operation with the various news media, the NGOs, and the country's trade unions and professional associations. Since the highest form of international supervision is provided by a complaints procedure for private individuals and state-to-state complaints, all States which have not yet done so should now ratify the International Covenants and Optional Protocol to the Covenant on Civil and Political Rights, and make the Declaration under Article 41. Those States which come within a regional system should proceed to accept that supervision as well.

(3) Any domestic report or response to an international or regional supervisory organ should be given the widest possible publicity. To the greatest extent possible non-governmental organisations, trade unions and professional associations should be encouraged to participate in, or at least to review and criticise, such reports or responses. To this end, countries should be asked to commit themselves to establishing a national human rights commission both for the purpose of an annual domestic review and for participating in the preparation of reports under international human rights obligations.

(4) It is necessary to recognise the need for and utilisation of different mechanisms and measures for the domestic implementation of different human rights:

(a) Political rights or fundamental freedoms are largely realised through restraining governments from restricting these. The main lines of defence are:

(i) genuine, pluralistic and periodically elected legislatures;

(ii) an executive accountable to the legislature and subject to judicial review;

(iii) an independent judiciary to review legislative, executive and administrative acts;

(iv) some form of effective legal aid to enable equal access to justice.

(b) Legal rights, or protection in the administration of justice, particularly in penal law, require:

(i) judicial protection as described above;

(ii) institutions like the office of ombudsman to supervise, e.g., discretionary decision-making, the prison system, some forms of medical treatments, such as in mental health institutions, etc.

(c) To provide for equality rights, it is necessary to institute:

(i) basic provisions of a constitutional nature, as well as judicial review of legislative and administrative action to enforce these constitutional rights;

(ii) administrative agencies like the office of ombudsman or anti-discrimination commissions to enforce equality of access in relation to governments, governmental agencies, and private individuals and corporations, through receipt of complaints, investigation, attempts at settlement of the grievance and some form of judicial, quasi-judicial or administrative enforcement;

(iii) affirmative action programmes;

(iv) special measures to help indigenous (or aboriginal) peoples to attain and maintain equality with the dominant majority population.

(d) Implementation of economic, social and cultural rights does not involve restrictions on government action, as with many civil and political rights, but rather a range of legislative and administrative actions, which must be undertaken by governments in consultation with, *inter alia*, those who can be expected to benefit.

Special mention was made of the need for all parts of this machinery to address effectively problems of gender equality, and to improve the effectiveness of law enforcement agencies in dealing with issues of violence against women.

At the same time, it was emphasised that domestic measures are not *necessarily* improved by an exclusive or dominant focus on state structures. It would be dangerous to slip into the belief that the problem of human rights violations can be resolved by merely creating another domestic institution. Examples were given of ombudsmen who receive no human rights complaints, national human rights commissions which have been diverted from their mandate, and Supreme Courts which have used their constitutional jurisdiction often to

limit and not to expand the frontiers of human rights.

Domestic measures such as those enumerated above are strengthened by empowering civil society institutions; by creating a legal and political culture which is supportive of human rights; and by strengthening the institutional capacity and professional competence of human rights groups to document violations of human rights, to engage in advocacy, and to broaden the base of support for such work through human rights education.

Particular attention was drawn to the situation of countries in transition, especially from military rule, where security forces can pose a serious threat to the new pluralistic democracy and the structures of civil society. Many participants felt it important that reconciliation not be used as an excuse to grant human rights violators immunity from prosecution or other appropriate action or consequences.

In sum, achievement of the highest level of human rights is a matter of domestic implementation of universal norms in co-ordination between state governments, and international monitoring and supervisory bodies, and co-operation and participation of national and international NGOs as well as the society as a whole. To this end the internationally approved human rights standards must become part of every country's culture.

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B. Role and functioning of international machinery

Rapporteur: Professor Theo van Boven

1. General issues

The Group realised that it should concentrate on issues where it could make an input into the process leading to the World Conference. In this connection it was stated that the World Conference could play an important role in raising public awareness and in sending a clear message to the public at large.

Participants stressed that international machinery for the promotion and protection of human rights should always be seen in relation to national structures for the promotion and protection of human rights. Similarly, international and regional machineries can not be considered as competitive systems but as complementary devices for the promotion and protection of human rights.

The Group also noted that a distinction can be made between enhancing the effectiveness of existing human rights mechanisms and the creation of new ones.

As another general feature of the discussion, the Group was aware of the importance of the preventive approach. In this respect early warning and preventive diplomacy were mentioned, as well as preventive mechanisms such as the one provided for in the European Convention for the Prevention of Torture, relating to a system of visits.

Participants drew attention to gender issues, in particular discrimination based on sex or sexual orientation, and to the protection of the rights of collectivities and groups, such as the rights of minorities and the rights of indigenous peoples. In this respect special reference was made to the introductory statement by the Secretary General of the Council of Europe.

Furthermore it was felt that in dealing with human rights, proper attention should be given to the rights of the victims of violations of human rights, notably the right to reparation, and to the related issue of bringing the perpetrators of human rights violations to justice.

2. More specific issues

The Group gave much attention to the strengthening and improvement of existing human rights mechanisms, notably the supervisory systems created by human rights treaties and the functioning of bodies whose mandates are defined by resolutions, such as working groups and rapporteurs. It was felt that the mandates of these mechanisms should be interpreted in a dynamic and flexible fashion, that they should develop means and methods of more effective co-ordination and co-operation and that they should benefit from basic and essential infrastructural facilities, such as a solid and comprehensive data base. Participants also discussed the desirability and feasibility of merging the various treaty mechanisms into a consolidated and unified supervisory system. Participants felt that this is an important issue which deserves further study.

The Group discussed quite extensively the problem of how to deal more expeditiously and less selectively with massive violations of human rights and with human rights emergencies. It was stressed in this respect that due attention should not only be given to violations of civil and political rights but also to violations of economic, social and cultural rights. It was argued that most of the existing mechanisms were for various reasons unable to respond effectively to massive violations of human rights. Attention was drawn in this respect to the present and potential role of the Security Council which might take more duly into account human rights aspects and human rights standards in the course of its activities, provided that it acts in a consistent and non-discriminatory manner. It was also stated that the present unsatisfactory situation of dealing with human rights emergencies proves the need for a new mechanism, such as a special human rights commissioner with a comprehensive mandate. In the course of the discussion it was stressed that not only in peace keeping operations but also in peace making efforts a human rights component should be built in as an indispensable element of the peace process.

Many participants saw considerable merit in the creation of a special human rights commissioner. Some participants felt that such a new human rights official should in particular focus on human rights emergencies. They favoured that this office be placed in the vicinity of the UN Secretary General. Other participants considered that the role of the commissioner should be that of a catalyst and coordinator in close co-operation with the existing human rights structure at the UN Human Rights Centre. Consequently, it would be the type and nature of the mandate of such a human rights commissioner which would be decisive as to where this office should be located in the systems of the United Nations. It was generally stressed that the commissioner should act in a spirit of impartiality and credibility.

Some other issues were raised in connection with the functioning of the human rights machinery. Thus, the need was stressed for a human rights presence in the field. Reference was made to human rights components in peace keeping and peace making operations and to the creation of a system of human rights monitors at international and regional levels. This could also prove to be important for the protection of human rights defenders at national and local levels. Another issue raised in the Group was the question of dealing expeditiously with urgent individual cases. In this respect reference was made to the device of interim measures under the treaty systems and to the urgent action procedures which are applied by the thematic mechanisms dealing with disappearances, summary or arbitrary executions, and torture. More in general, it was stressed that petition or complaints procedures for individual persons and groups should be introduced or strengthened with respect to all human rights instruments.

Participants argued that it is important to develop structures of dialogue and partnership. One of the means to do so, is the adherence by States to human rights treaties. States should therefore be encouraged to ratify these treaties on the widest possible scale. The United Nations should resort to more active policies and practices to encourage States to ratify human rights treaties. Concern was expressed about far reaching reservations which some States had made when ratifying human rights treaties. Both the States Parties and the supervisory treaty bodies should take a more critical stand with regard to such reservations.

Participants expressed serious concern about the lack of adequate human and material

resources earmarked for human rights activities. The international machinery was prevented from functioning properly and effectively because basic infrastructural facilities in terms of staff assistance and logistics are not available. This is the more regrettable in view of the increasing demands made on the human rights programme. The wish was expressed that the World Conference take a strong stand on this issue in order that the member States and the UN budgetary and administrative authorities remedy this deficiency. With respect to the staff of the United Nations - and this may be applicable as well to the staff of other international organisations - it was observed that with all the staff members, in particular those working in the political field, a greater sensitivity, awareness and a more profound knowledge about human rights needs to be built up.

The programme of advisory services in the field of human rights was critically discussed. While recognising the strong potentials of this programme, speakers felt that it was not sufficiently linked with the other parts of the human rights programme, in particular the monitoring activities. It was also noted that governments receiving advisory services should commit themselves to substantially improve their human rights performance and that this should be properly monitored. However, the advisory services programme should not be a substitute - as it sometimes happens - for investigatory procedures in relation to persistent violations of human rights. The suggestion was put forward that an Independent Board of Trustees be set up in order to oversee the policies of the advisory services programme.

The Group discussed the role of humanitarian law in situations of armed conflict. It was felt that the World Conference could give an impetus so as to clarify the relationship between human rights and humanitarian law standards and that the Conference should promote the idea of creating a mechanism to enhance and enforce respect for humanitarian law standards. In this connection the need for the prevention and punishment of war crimes was emphasised and mention was made of the desirability of establishing an international criminal jurisdiction.

The Group generally recognised the important and indispensable contributions made by NGOs to the promotion and protection of human rights, both at the UN and elsewhere. It was stated that NGOs should be considered as responsible partners and that a more active involvement on their part in the promotion and enjoyment of economic, social and cultural rights would be a welcome development. It was also stressed that human rights education and human rights training, and in general the promotion of a human rights culture in the minds and in the attitudes of people, is a crucial precondition for securing universal and effective recognition and observance of human rights and fundamental freedoms.

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C. Promotion of Human Rights and Prevention of Human Rights Violations

Rapporteur: Ms Hina Jilani

1. A gender-sensitive approach was stressed as essential for a meaningful and realistic discussion on human rights. Concern was expressed at continuing violations of women's fundamental human rights and the failure of the world community to respond adequately to these violations.

Despite recognition of the right to equality as a fundamental right, gender-based discrimination remains pervasive. The political and expert human rights bodies of the United Nations have often characterised abuses as social and cultural practices that lie beyond the purview of human rights norms and implementation procedures. The rise in religious fundamentalism has created a social and economic imbalance, negatively affecting women's rights in particular. The breakdown of law and order, and conflict situations, have exacerbated the incidence of violence against women.

The neglect of women's human rights is often attributed to the fact that many of the egregious violations that women suffer are inflicted by non-governmental actors. Yet, the international community has accepted the principle of State responsibility for violations of the integrity and security of the person, where the State fails to exercise due diligence to prevent, investigate and punish such violations. Moreover, non-discrimination norms, including those on gender discrimination, explicitly reach private action. We therefore can no longer draw a veil over violence against women in the family or discuss private acts of discrimination against women.

The various forms of gender-specific violence breach existing guarantees contained in the various human rights instruments. Yet their application to women is ignored and the implementation mechanisms have consistently failed to enforce accountability.

Several operational proposals should be considered in the context of the World Conference, with the aim of strengthening the principle of Government accountability for violation of women's human rights. The bodies responsible for all monitoring, reporting, and complaints procedures must address violence against women, including gender-specific abuses, in the areas that fall within their mandates. To this end, the World Conference should adopt recommendations calling for:

(1) Training for all independent experts and the staff of the Centre for Human Rights to ensure that they will address abuses against women, and will carry out their work without gender bias;

(2) Goals and time-tables should be established for securing equal representation of women on all treaty bodies and among the special rapporteurs and working groups in the Commission on Human Rights;

(3) There should be periodic review of the progress made on integrating women's human rights into the work of the existing bodies and mechanisms.

However, even if such integration is accomplished, many violations of women's human rights fall outside the mandates of the existing mechanisms. It is therefore proposed that a special rapporteur be appointed by the Commission on Human Rights to monitor and investigate gender discrimination and violence against women. A rapporteur appointed by the Commission on Human Rights would provide a framework for strengthening government accountability - by ensuring public debate on a country-specific basis. It is axiomatic that, to be effective, monitoring must be carried out by an independent expert, rather than a political body like the Commission on the Status of Women (CSW).

In connection with reporting and complaints procedures, the World Conference should recommend measures to strengthen the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In particular, the Conference should address three critical issues:

(1) A large number of far-reaching reservations have been entered to the Convention. A number of these are clearly incompatible with the object and purpose of the Convention, as they purport to limit or exclude the basic obligation to eliminate gender discrimination. The World Conference must address reservations to the Convention, and to all other human rights treaties, as obstacles to the effective implementation of existing instruments.

(2) The World Conference should recommend the elaboration and adoption of an optional protocol creating an individual and inter-State complaints procedure under the Convention.

(3) Adequate financial and human resources must be provided for CEDAW, and the World Conference should recommend measures for establishing an extended meeting period for CEDAW on a regular basis.

Human rights awareness and education must keep a women's perspective in order that standards can be better applied and procedures for implementation can be strengthened.

The participation of women's groups in the International Year of the Family is critical to ensure that efforts to protect the family as an institution are not at the expense of women's human rights.

2. Awareness and education programmes must be aimed at creating a human rights culture. Values of human rights and democracy must be promoted simultaneously to establish the link between them.

Programmes must target institutions where violations or potential for abuse exist. State agencies of law enforcement must be exposed to human rights concepts and made aware of international norms and standards in order to reduce their potential to violate these rights and to adopt a more human rights conscious behaviour.

Children have become vulnerable to abuse in the form of racial violence and rape in schools. To inculcate human rights values in children's education, awareness programmes must be made a part of school curricula. Children should be encouraged towards a better

understanding of their own rights, and to devise programmes and design material to promote self-education.

Programmes for raising public consciousness can be channeled for dissemination through a variety of groups, e.g. neighbourhood groups, grass-roots organisations. Mass media can be an effective means of dissemination and should be utilised especially in societies which have only recently emerged from imposed isolation and are embracing the concepts of human rights with enthusiasm. Major radio stations may contribute by dedicating weekly programs to broadcast information on human rights issues.

Specialised training of professional groups should be undertaken in order to create the ability to address human rights issues more effectively. Teachers should receive training for imparting human rights concepts through education. Doctors need special training for detection of torture and for treatment of torture victims. A proposal can be made at the World Conference for making this a part of the United Nations' activity.

Judicial attitudes affect the implementation of human rights law to a large extent. Gender, racial and class bias in judicial decisions has led to the denial of fundamental human rights. Such bias is becoming more and more apparent, especially in the application of the equality law to women. Judicial pronouncements, particularly in cases of violence against women, reflect stereotypical beliefs and negative values embedded in culture. This tendency has undermined the role of the judiciary in the promotion of human rights. Educational programmes for the judiciary should be undertaken at the international level to clear these biases for a better dispensation of justice.

Despite numerous recommendations, no binding instruments exist for the implementation of teaching programmes. A proposal for an International Convention on Teaching Programs can be considered with an obligation on the State Parties to report on implementation. In addition, reports can be elicited from NGOs and other groups associated with the teaching programmes.

At the national level, governments ignore proper analysis of projects and are reluctant to finance human rights activity as they perceive it as an expression of criticism of their policies. Financing through donor agencies is viewed with reservation. On the one hand, priorities of the donor government can result in a less realistic handling of issues and, on the other, dependency of domestic organisations on foreign financing increases. Where external funding becomes essential, multilateral agencies should be preferred as sources.

Enhanced financing will be discussed at the Vienna Conference. Commitment for increased allocation for human rights projects can be solicited. This would be important for raising public opinion even if no significant success is achieved in terms of a concrete pledge. For any degree of success, political support, for human rights programmes, is essential from both the people and the government.

3. Despite growing democratisation, human rights violations are increasing, requiring rapid expansion of programmes and activities. A major impediment to a parallel increase in preventive and promotional activity is the lack of financial resources both domestically and within the United Nations system. The meagre resources made available for human rights

work is a poor reflection on the commitment of governments and multilateral organisations.

The allocation of a mere 0.7% of the United Nations regular budget to human rights work is regrettable in view of the significance being attached to human rights issues. Mechanisms and initiatives require adequate financing for effective action and disposal of work.

A more realistic budgetary allocation must be made for human rights activity. In view of the limited resources available, human rights projects should be planned by prioritising activities, assessing the worth of projects in terms of the impact and involvement of communities and their benefit to victims.

While accepting the importance of awareness education and training programmes, the scant resources of developing countries can seriously affect the implementation of such programmes. In countries which are grappling with the problems of survival and can barely fulfil basic needs, support for such programmes would be difficult to elicit.

4. Economic deprivation affects human rights situations. Strategies for promotion and prevention must be devised bearing in mind prevailing economic conditions. Monitoring of economic policies becomes crucial to safeguard against the undermining of human rights through policies which are pursued to promote economic development. Information on the impact of such policies on human rights, especially rights of workers, must be disseminated to create public opinion. At the same time, the concept of economic rights should be promoted in such a way as to strengthen recognition and assertion of these rights on a par with civil and political rights.

5. International law and action on human rights must be based on equality and the principle of universal application to all, regardless of economic status, race, gender, age, nationality, or sexual preference, must be strictly adhered to. Rights of groups traditionally ignored in the discourse on human rights, e.g. gay persons, should receive recognition. International intercession for the protection or promotion of rights must not be selective and must inspire confidence in international law and justice. Sensitivity to human rights must not be displayed only when violations occur in some parts of the world, but a more even-handed policy needs to be adopted. Violations by developed countries must also receive attention and prompt action.

6. The weakness of existing human rights machinery is evident in its failure to anticipate or speedily respond to human rights crises. The proposal to the World Conference for a United Nations Special Commissioner for Human Rights formulated by Amnesty International would be a measure to address the current gaps in the international system of human rights protection.

Some reservations on this proposal include:

(1) Concern over the displacement of existing mechanisms and duplication/multiplicity of existing procedures;

(2) The political profile of such an office may affect resolution of human rights

issues;

(3) Difficulties in devising appropriate selection and appointment procedures for the office;

(4) Effectiveness of such an office would depend on availability of adequate resources, which have not been forthcoming;

(5) It could result in an increase in the United Nations bureaucratic machinery;

(6) Lack of sufficient will could render the Special Commissioner as ineffective as the present system.

Nonetheless, the need to enhance the effectiveness of the existing system is very real and part of the role of the Special Commissioner would be to carry out reforms and provide leadership to the entire human rights programme, not only for initiatives of the Centre for Human Rights, but also those undertaken through other agencies.

With an appropriately broad mandate, the Special Commissioner would allow for prompt and effective response with the capacity for efficiency and flexibility.

A high placement in the United Nations hierarchy can enhance the independence of the office which in turn can improve performance of the functions assigned under the mandate.

7. The work of monitoring violations is crucial for the promotion of human rights and prevention of abuses. The growth of human rights NGOs performing the functions of monitoring and investigation of violations is a positive development in the context of human rights work. However, the nature of activity undertaken by such NGOs and individual defenders exposes them to serious threats to life and liberty.

The World Conference must make a strong commitment to the protection of human rights defenders, through the adoption of concrete measures. Appointment of a special rapporteur for action on attacks on human rights defenders could be a positive step for fulfilling this international commitment. Action by the special rapporteur would be under the terms of the Declaration on Human Rights Defenders which is currently being finalised. Such measures would give an international legal status to human rights defenders.

Action must not be limited to cases where the involvement of the State is direct. Adequate provision must be made for action against non-State parties threatening or injuring human rights monitors. Such harrassment may be acquiesced in by the State where it is not overtly involved itself. States must be held responsible for failure to protect monitors against violence in such cases.

8. To increase awareness of human rights and heighten visibility of action, it is important to subject government initiatives on human rights to open debate. The proposal for preparation of National Plans by governments for improved observance of human rights standards would be one way to promote national debate on governmental action. External

human rights policies would also be addressed in the National Plans. This would provide an opportunity for voicing concerns about conditions attached to aid and selectivity in the application of human rights criteria practised by donor countries.

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THEME 2: DEMOCRACY, DEVELOPMENT AND HUMAN RIGHTS

A. Importance of the inter-play between economic, social and cultural rights and civil and political rights

Rapporteur: Professor Virginia Leary

1. General discussion

Civil and political rights and economic, social and cultural rights are inter-related and equally important.

Despite the existence of two separate international human rights covenants - one on civil and political rights and one on economic, social and cultural rights - the division between the two sets of rights is not always clear-cut. The Convention on the Elimination of All Forms of Discrimination against Women, for example, does not divide the rights relating to women into these separate categories. The rights of indigenous peoples cannot easily be divided into the two separate categories.

States have considerable discretion as to the choice of means in the implementation of economic, social and cultural rights. Measures to enforce civil and political rights are basically the same across a diverse range of states (action through the courts, legislation, etc.), while measures to protect economic, social and cultural rights may vary considerably from state to state. Justiciability (action through the court system) is not always appropriate in regard to the latter. Some states may enforce such rights through constitutional protections, including directive principles; others may use formal administrative remedies such as ombudsmen offices or administrative appeals tribunals.

Protection of economic, social and cultural rights does not require a centrally planned economy or a developed welfare state, since protection may be guaranteed through the private sector as well as through state initiative. However, the ultimate responsibility for the protection of these rights remains that of the state.

States should be encouraged to establish a minimum threshold for the protection of economic, social and cultural rights; this threshold may differ from state to state.

There is no clearly recognised international responsibility flowing from human rights instruments or the right to development to assist particular beneficiary states. If a state is totally unable to guarantee minimum economic, social and cultural rights, the international community could assist.

The concept of cultural rights is not yet well developed, although some beginnings have been made with regard to the rights of indigenous peoples. Cultural rights have been in a secondary position, even within the concept of economic, social and cultural rights.

2. Obstacles and difficulties in the realisation of economic, social and cultural rights

(1) Financial means and the implementation of economic, social and cultural rights

Differing opinions were expressed regarding the financial resources necessary to implement economic, social and cultural rights. Some participants referred to the lack of financial resources as an obstacle, particularly stressing the need for a basic infrastructure to guarantee such rights. Others, however, expressed the belief that lack of means was not the principal difficulty.

Protecting economic, social and cultural rights, it was felt, is often a question of choosing priorities rather than a lack of means: states often have funds available for unnecessary military spending, while contending that funds are unavailable for social needs of the population. Budget allocations give evidence of priorities.

Ensuring economic, social and cultural rights may be less expensive than failing to implement them. Preventive health care is less expensive than curative care. Preventing unemployment may be less expensive than dealing with the consequences of unemployment.

Financial resources affect the protection of civil and political rights as well as economic, social and cultural rights. For example, creating a court system in order to guarantee fair trials is expensive. Furthermore, the international community does not, in practice, demand the same degree of protection of rights by poor states as by wealthy states.

(2) Discrimination; gender issues

Discriminatory practices in economic, social and cultural rights may be explicit (against women or ethnic groups) or implicit: linked to the adoption of certain types of economic policies.

A gender approach is required in the way economic, social and cultural rights are envisaged, as well as civil and political rights. Statistical data show that women are at a disadvantage in (i) political power, (ii) access to economic benefits (feminization of poverty), (iii) access to literacy and educational opportunities. Women must participate fully in economic decisions. "Parity democracy" is an innovative approach to the theory of human rights.

Discrimination because of sexual orientation was mentioned regarding both civil and political rights and economic, social and cultural rights. Equal treatment, not affirmative action, is necessary in this regard.

The definition of "discrimination" is important; it does not necessarily mean that like should be treated alike. There is now an emphasis on assisting disadvantaged groups through affirmative action, etc. Some persons or groups may be in an especially disadvantageous position, for instance, workers trying to negotiate during a period of unemployment. The question might be asked whether protective legislation for women is discriminatory, or represents assistance to a disadvantaged group; the answer may depend on the economic situation in a particular part of the world.

(3) Lack of knowledge

A participant referred to a State where citizens had voted against the incorporation of economic, social and cultural rights into the Constitution, apparently because of lack of knowledge concerning such rights. Concepts of civil and political rights and democracy are well known in most states and have been defined in internal law over many years, but economic, social and cultural rights are a new concept, not yet well developed in the law of most states. Concepts of affirmative action have opened up the notion of positive rights to aid disadvantaged groups; this may lead to better understanding of economic, social and cultural rights. There is an urgent necessity to increase knowledge concerning means of implementing these rights.

(4) Insufficient identification of responsibility at national level

It is more difficult to identify those responsible for failure to implement economic and social rights at the national level than those responsible for failure to implement civil and political rights. It is difficult to determine the legal or non-legal methods available to claim implementation of economic, social and cultural rights within states.

(5) Over-emphasis on free market approach to economy

The importance accorded to a free market economy has sometimes led to a de-emphasis of the social aspect. The human dimension of economics may be neglected under this approach. The rejection of the entire past of Communist countries has led to a rejection of even the positive elements, such as social aspects.

(6) Need for innovative approaches to implementation

Lawyers and state officials have not been sufficiently creative in developing means of implementing economic, social and cultural rights. There has been a failure of legal imagination. Class actions developed in states to enforce group rights demonstrate that new and innovative legal means can be developed if there is sufficient political will. Non-legal approaches should also be investigated (such as ombudsmen) to implement these rights.

3. National and international means of implementation

(1) National implementation

(a) The office of ombudsman

The office of ombudsman is particularly suitable for implementing economic, social and cultural rights as well as civil and political rights. Complaints may be lodged against administrative officials in any field. The ombudsman may investigate any abuse of administrative power and may suggest changes in the law. The ombudsman is given full access to administrative files. In one State cited, 25% of the work of the ombudsman related to economic, social and cultural rights such as issues of social welfare, education and health. The role of ombudsman is particularly important in the defence of disadvantaged groups.

In order to achieve credibility, the office of ombudsman should fulfill the following criteria:

- It should rest on a firm legal and statutory basis. It was mentioned that, in one State, the ombudsman may refer to principles of "social justice" in order to compensate for gaps in the law.

- It should be independent of the administration.

- Its findings and recommendations should be treated with the greatest respect.

- No area of public administration should be exempted.

- Its services should be free to citizens and non-citizens.

(b) Local non-governmental organisations

Local non-governmental organisations may play an important role in the protection of economic, social and cultural rights. Although most non-governmental organisations focus on civil and political rights, some are active in economic areas, such as education, development and the environment, and a number are active in the social field. However, these organisations do not generally consider such issues from the "rights" point of view.

Non-governmental organisations are often the first to identify the problems of vulnerable groups. Some, because of their semi-public function, have become semi-public bodies which receive funding from governments, which enhances their ability to protect economic, social and cultural rights.

(c) Obligations of national governments

The core obligations of states regarding economic, social and cultural rights are "obligations of conduct", not "obligations of results". States are obliged to take certain steps to give effect to these rights, but they are not required to guarantee results. In implementing the "right to work" they are not required to provide jobs for all, but they are obliged to be active and take measures to overcome unemployment, such as by prohibiting unfair dismissals and providing equal access for all to vocational training and unemployment benefits.

The core obligations of states regarding social rights include the obligation: (1) to legislate, (2) to organise a framework for agencies concerned, (3) to provide funding.

A government representative expressed the view that the main responsibility of governments regarding economic, social and cultural rights was to ratify the relevant human rights treaties, to abide by them and to file the required reports. This was already difficult since there are so many treaty bodies. The role of non-governmental bodies was to assist in the preparation of reports at the national level. International assistance should be provided to governments in the preparation of reports.

(2) International implementation

Optional protocol to the Covenant on Economic, Social and Cultural Rights

It is not necessary to decide whether to support or reject the Optional Protocol at the World Conference; rather, the hope was expressed that the World Conference would recommend that the issue be studied in depth. The Committee on Economic, Social and Cultural Rights has prepared a paper which considers many of the issues raised in discussions on the Protocol. (This will be available with the report of the December 1992 session of the Committee.)

Support for the proposal of an Optional Protocol was expressed by a number of participants. It was suggested that, in view of the indivisibility of economic, social and cultural rights and civil and political rights, the same enforcement mechanisms should be adopted for both sets of rights. An Optional Protocol would be a means of providing clarification of the content and implications of economic, social and cultural rights. A case by case approach can be useful. A supporter of the proposal suggested there should also be optional protocols to other conventions, such as the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women.

Other participants expressed hesitancy with regard to the proposal. Some government representatives, while not registering opposition, expressed doubts and wished to learn more details. Questions were raised concerning the lack of trust in the legal system if it proved impossible, for instance, to guarantee jobs for all or equal access to extensive medical care.

Technical and legal difficulties regarding the proposal for individual complaints under the Protocol were raised by other participants who regarded economic, social and cultural rights as requiring a different mechanism than implementation of civil and political rights, even assuming both sets of rights are equally important.

4. Economic, social and cultural rights within the United Nations system

(1) Need for increased financial and administrative support

The United Nations, in general, has paid insufficient attention to economic, social and cultural rights. There is a need for further assistance for all UN human rights activities and especially increased support for the Centre for Human Rights; that support should include support for the promotion and implementation of economic rights, specifically, increased financial and secretariat support should be provided for the Committee on Economic, Social and Cultural Rights.

There is also need for improved advisory services for the preparation of all human rights reports, according to a government spokesman.

(2) Need for inter-agency cooperation

UN agencies should be involved in the monitoring by the Committee on Economic, Social and Cultural Rights. The awareness of such agencies should be raised regarding

defining their work in terms of rights. Economic, social and cultural rights are a classic case for closer cooperation among UN agencies.

The work of the development agencies should also be more closely linked with the human rights work of the UN. The 1992 *Human Development Report* of the UNDP referring to a New Global Compact for Development was cited as an important initiative linking development and human rights.

(3) International agencies working at cross-purposes

Several speakers referred to the negative social consequences resulting from the obligations of structural adjustment imposed on developing countries by the international financial institutions. These obligations are sometimes contrary to the commitments states have made in the ratification of the Covenant on Economic, Social and Cultural Rights and contrary to ILO standards. The international financial institutions should realise that they are part of the UN and thus must uphold UN social and human rights standards.

There is now a plurality of normative systems for social rights but, in some cases, this has led to the lowering of standards, particularly with regard to rights relating to workers. The European Community Charter of Social Rights, for example, contains less stringent standards concerning freedom of association and collective bargaining than the ILO conventions. The World Conference should adopt a recommendation that international bodies should avoid the lowering of existing international social standards.

Reference was also made, however, to the positive recent efforts to strengthen the European Social Charter.

(4) Example of the International Labour Organisation (ILO)

Several participants cited the example of the work of the ILO, which has been protecting and implementing social rights for more than 70 years. The ILO sets international standards, helps in the elaboration of national legislation by providing technical assistance and studies, and has a procedure for the settlement of disputes. It has developed a strict control system and has an excellent secretariat to assist the monitoring system.

One participant proposed that ILO mechanisms and UN mechanisms concerning labour rights should be combined. ILO mechanisms might be used by the UN for the enforcement of labour rights.

* * *

B. The place of development in the protection of human rights

Rapporteur: Mr. Johannes van der Klaauw

1. The use of development assistance and economic relations between states to promote human rights

Donor governments now use their bilateral and multilateral relations, in the field of development assistance and in the wider area of external economic relations and foreign policy, to raise human rights issues with governments of aid-receiving countries and trading partners. In this dialogue, human rights concerns are increasingly addressed together with questions not only of democracy and the rule of law, but also of good governance, transparency of government administration or military expenditure. There is a need to define more precisely what is covered by concepts such as "good governance" and "transparency," accountability and popular participation, and the way in which they are interrelated.

Development should be seen in the broad sense, and its promotion should be based on equal attention for the protection of economic, social and cultural rights as well as civil and political rights, with the human person at the centre. The 1986 UN Declaration on the Right to Development underlines the interdependence and indivisibility of both civil and political rights and economic, social and cultural rights and promotes a concept of development based on an integrated approach to the full range of human rights. The Declaration contains the necessary elements for the international community to establish a fair and credible policy and practice of development cooperation which is based on a mutual appreciation of the rights and obligations of both donor and aid-receiving countries.

An integrated approach to respect for and enjoyment of all human rights should preclude the denial or suspension of certain human rights for the sake of promoting other rights. The protection and promotion of civil and political rights is essential to create the conditions necessary for the realisation of economic, social and cultural rights, whereas support for socio-economic development should contribute to respect of the right to freedom of expression and association, and should empower citizens to choose their system of government at all levels. The interdependence and indivisibility of both sets of rights should be the basis of any development assistance programme. The elaboration and implementation of the UN Convention on the Rights of the Child is an example of an integrated approach to the full range of human rights. The Committee on the Rights of the Child, which oversees implementation of this Convention, links the monitoring of violations of human rights to the provision of constructive technical assistance and support towards the fulfillment by states of their obligations under the treaty. Local non-governmental organisations actively contribute towards the work of the Committee and their monitoring of the implementation of the Convention is a good illustration of how to promote popular participation in the development process.

Development assistance by donor governments is still too often based on models which do not lead to the full respect of all the human rights of those who are meant to benefit from such assistance. For example, measures to promote deregulation of the economy do not necessarily lead to political liberalisation. Thus, support for the introduction and

consolidation of a market economy should be accompanied by measures promoting social and economic rights, in particular of workers and local communities, and should also be accompanied by democratic reforms, the strengthening of democratic political institutions and steps to protect the environment and social and cultural traditions.

In linking human rights and development assistance, donor governments now make the latter conditional on the human rights records of aid-receiving countries. This linkage is inherent to a concept of development which centres on the promotion of the full range of human rights. What is now felt to be of particular importance is the nature of the conditionality, which is gradually changing. Traditionally, it has taken the form of practical measures which may either restrict or suspend parts of development assistance. In so far as such restrictive measures are concerned, donor governments should avoid imposing conditions on aid which are based on criteria not consonant with norms and values accepted by the international community. Moreover, such measures are viewed by some aid recipients as counter-productive to the effective implementation of the aims of development assistance. Conditionality of this kind, imposed by donor governments because of deficiencies in the human rights records of developing countries, is still too often marked by inconsistency and selectivity and can be seen as being determined rather by considerations of political expediency or economic interests. Donor governments and agencies should improve the consistency and coherence of their human rights action, and the principles and operating guidelines of their development policies should be based on transparent and equitable criteria. Donor governments, in making their economic and aid relations dependent on human rights considerations, should also be ready to accept criticism of their own human rights records and to remedy situations of abuses.

It is essential that the consensus on international human rights standards developed during the last decades is not put into question by government actions which make human rights considerations subject to political or economic interests. Confidence-building measures are essential in bridging a communication gap which may have recently arisen during preparations for the World Conference on Human Rights. The UN Declaration on the Right to Development could form the basis for steps aimed at restoring confidence and reinforcing the implementation of international human rights standards. If donor governments want to take punitive measures in response to human rights violations in aid-receiving countries, they can only do so on the basis of an objective and transparent assessment of the human rights situation in the country concerned, being guided by equitable criteria and applying aims and means which do not lead to a double penalisation of the local community. It has to be welcomed and should be encouraged that donor governments are now moving away from a form of conditionality based purely on sanctions and using aid also to strengthen national human rights infrastructures and to support initiatives for the promotion of human rights, democracy and the rule of law. Examples of positive measures include training for the legal community and law enforcement officials, and projects to establish or consolidate ombudsman-type institutions. It is recommended that the World Conference on Human Rights should focus its attention on specific practical and operational measures to strengthen human rights protection, civil society and confidence-building, and should agree on a framework for promoting collaboration in development assistance.

Donor governments are accountable to their tax-payers for the financial aspects of trade and aid relations; public opinion now demands transparency and openness in the

administering of development assistance, including human rights projects. To date, however, there has been little attention given to measuring the realisation of social and economic rights and positive measures necessary for their attainment. There is thus a need to develop and strengthen the indicators base and benchmarks by which the impact of human rights projects on the realisation of the full range of human rights can be adequately assessed. Recipient governments should also be held accountable for the way they themselves handle financial and technical assistance to promote human rights. Accountability, transparency and the existence of a legal framework are key aspects of sound development management by the public administration in both donor and aid-receiving countries.

Donor governments are encouraged to further develop a policy of promoting human rights in developing countries, based on solidarity and partnership and in continuous dialogue with recipient countries, which is part of a mutual learning process. Cooperation between the non-governmental communities in the donor and developing world is already illustrative of this in many cases, through joint project definition and enabling recipient institutions to take responsibility for projects.

2. The role of international financial institutions and development agencies and the models of economic development advocated and their impact on human rights

There is a lack of strategic thinking within these institutions on what type of sustainable development is being promoted and its human rights implications. Generally speaking, international financial institutions adopt a technical approach and do not take into account human rights concerns, or do so selectively. Assessment of the human rights impact - as carried out in relation to environmental impact - should become a priority for these agencies. Human rights violations should be seen as an obstacle to development.

There should be more thinking about the ethics of project funding by international financial institutions. The effects of large-scale projects on the living conditions and the protection of the human rights of minority groups and indigenous peoples should be more systematically taken into account.

Development projects with specific human rights objectives, it is felt, generally yield a low economic return. They would thus be suited to concessional loans.

There is a need for more consensus on how to deal with the long-term effects of certain types of loans and their implications for future generations.

3. The role of civil society and the discourse on human rights

In developing and implementing the concept of civil society there is a need to enlarge the basis of support for the concept and its main characteristics among the domestic human rights community and the indigenous population. Much of the human rights debate (particularly in international fora), which has traditionally been focussed on civil and political rights, is academic in nature and there is a need to make it more relevant to large sectors of people in developing (and other) countries. The establishment of civil society, while it is jeopardized by the rise of ethnocentrism, racism and xenophobia, or religious fundamentalism, can itself represent the strongest weapon against these serious phenomena which threaten

violently to break up the economic, social and cultural fabric and lead to serious human rights violations against minorities, women, social groups, etc. At the ideological level, the challenge will be to counteract notions of the nation-state and national sovereignty.

The involvement of all layers of the population in the development of civil society and of participatory democracy is essential. Part of this process is the establishment of institutions and mechanisms by which individuals and groups can seek recourse against infringements of their rights. Particular importance is attached to 'democratising' remedies for violations, through social action litigation, for example. Training and education programmes are also an essential element of projects to promote human rights and civil society. Particular attention should be paid to the education of young people in tolerance and respect for human rights. One suggestion was for schools to encourage "human rights clubs."

It is imperative that donor governments and institutions administering development assistance scrupulously examine ways and means by which support for initiatives to promote civil society is channelled and applied. There is a need for sound planning and project identification, and for regular assessment of the impact and results of such projects.

The human rights movement has to respond to the challenge of how to safeguard the achieved consensus on the interpretation of international human rights standards and the way in which they should be implemented. This is relevant for domestic human rights organisations in campaigning for the establishment and consolidation of civil society at national level, but also for international NGOs in monitoring inter-state relations to promote the concept of civil society and the rule of law as rooted in international human rights standards. At the same time, the discourse on human rights and development could benefit from the indigenous, religious and cultural traditions of the "South". This holds true also for the further articulation of concepts of good governance and accountability. The rhetoric on human rights and development needs to strike a balance between the secular, pluralistic debate grounded on respect for individual rights and the traditional, symbiotic discourse which finds its resonance in the experience and customs of ordinary people in developing countries.

The currently practised approach to development and its realisation through the full enjoyment of human rights is still too much dominated by concepts of the nation-state and ethno-populistic ideology. The human rights movement should campaign for a more equitable allocation of funds and resources - including those externally provided - which will benefit indigenous communities and minority groups. This will enhance the capability of popular associations and local communities to participate in the development process. It will also enable a developing civil society to counteract ethno-populistic and religious fundamentalist ideology. The introduction and consolidation of civil society should provide the best guarantee for the mutual reinforcement of participatory democracy and sustainable development, based on the protection and promotion of fundamental human rights.

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C. Relationship between human rights, democracy and development

Rapporteur: Dr. Michael F. Czerny, S.J.

1. History and definitions

We experienced great difficulty in defining the terms *democracy* and *development* and in establishing their inter-relationships with *human rights*. Propositions such as the following were advanced:

- development should involve a genuine social and economic democratisation, not just the enriching of an elite;
- economic development should provide an underpinning for human rights and democracy;
- human rights and democratic values should penetrate development, that is, economic and financial policy.

But we could not agree upon the causality/close links/dependence/dialectic/equation/evolution/intertwining/priority or sequence among democracy, development and human rights. Debates on this point have been going on for such a long time that, instead of trying to fix definitions, it would be better to seek flexible, workable meanings. Beyond all definitional disagreements, it is perfectly clear that no person would willingly see their human rights, democracy or development diminished or reduced, or choose to live under repressive or totalitarian conditions.

Discussion at the World Conference on Human Rights would benefit from a mutual recognition of *differences* in point of view (between North and South, developed and underdeveloped, etc.). What attitudes or awareness would help to avoid futile confrontation and enhance a collaborative, constructive approach in Vienna?

The history of modern economic development is not only complex but also highly ambiguous: many countries became technologically advanced via a history of terrible violations imposed on their own people and on others. What the First World accomplished slowly and at great human and environmental cost, poor countries today are supposed to achieve rapidly, without violating anyone's rights and with great ecological responsibility. The right to development used to be *taken*, often by force and violence; now the same right must be *shared*, and with generosity.

Frankness and honesty seem in order. Frankly, international economic/development relations have been deteriorating and continue to do so, and many other obstacles to understanding exist upon which this interregional meeting has touched. No country or region can honestly claim to have reached the pinnacle of democracy or human rights or to possess the only model for development, much less impose these on others.

2. The viewpoint of the poor

Let the World Conference place persons *first* "to enable the poorest populations to

exercise their rights to self-expression and the freedom of association with others upon which depend all other fundamental rights".[1] Let the preferential option for the poor characterise all the deliberations of the World Conference, recognizing "the necessity of placing at the centre of all debates on human rights the person itself, with all of its inalienable and indivisible components: '...[T]he poorest remind us of what we seem to have forgotten: that every human being IS a human being and that consequently human rights are to be defended, not in the name of some common sense of duty, but in the name of humanity'."[2]

The poorest in the world and the most disadvantaged in each country - the materially poor, the marginalised, the handicapped, the victims of AIDS - have something very precious and valid to contribute to the human community, even though society seeks to hide them away or eliminate them. By contrast with xenophobia in some countries, some impressive examples stand out of very poor countries taking care of numerous refugees, significant in proportion to the local population and putting considerable strain on the public or social budget.

Let no country consider itself too poor, no country too rich, to take better care of its own poor and the poorest in the world!

3. Democracy

There were calls to democratise the United Nations, the Security Council, and especially the International Financial Institutions, and to integrate human rights into their decisions.

Given the frequency and ferocity with which minority rights are being abused, ethnic or minority rights represent *the* burning issue in the 1990s and perhaps the biggest challenge to the nation state within the international system as it has evolved in the 20th century. From former communist countries comes the warning to beware of "imitation democracy". This shows the need for a good working definition of democracy, sensitive to cultural differences.

What does the right to democracy consist in? Elements include: the rule of law, an independent judiciary, free elections and respect for the popular will, a separation of powers, ideological pluralism, freedom of the press, freedom of association (especially of workers), rights of minorities and different religions, access to the basics of life (food, clothing, shelter, education, work). Are there any important elements missing? What is their order of priority in different countries?

4. Development

What does the right to development consist in? While no one succeeded in defining

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[1] International Movement ATD Fourth World, Proposition 4, in "Reflections in the preparation for the World Conference on Human Rights", Pierrelaye, January 1993.

[2] Joseph Wresinski, "The Very Poor, Revealers of the Indivisibility of Human Rights", in *The Human Rights in Questions*, French Consultative Commission on Human Rights, 1989, as reproduced in International Movement ATD Fourth World, op. cit. at No. 2.

the right, everyone emphasised an *integral*[3] rather than an economicist notion of development. No argument today can justify economic growth without social and ecological justice.

Nevertheless, the international financial institutions often oblige receiving countries, like Madagascar, to pursue monetarist free market policies. "We do not know whether structural adjustment programmes will eventually wipe out poverty," said Madeleine Ramaholimihaso in her much-appreciated paper; "what we have observed so far is that they are in the process of wiping out the poor."[4] The so-called free market, and/or structural adjustment programmes, seem imposed as a new and unquestionable dogma, and in fact determine a whole range of policies, not just economic, but also political, social and cultural. What is the place of national sovereignty and social ethics here in obtaining sustainable and equitable development?

Paradoxically, the same countries which insist on human rights and democracy, nevertheless are quick to close their markets to countries seeking to develop and democratise.

Conditionality: The withdrawal of development aid as a sanction against the infringement of human rights was vigorously debated. Such conditionality represents a very delicate issue which will certainly engage the World Conference.

The discussion group was constantly reminded that donor states should avoid a unilateral, paternalistic, or "school master" approach to the granting of assistance to countries in need. The accusing finger may seem pointed at recipient nations, whereas all countries are liable to fail in respecting human rights, including social and economic rights, and in keeping democracy genuine and participatory.

Nevertheless, in cases where abuses are extreme and the recipient government offers little realistic hope for improvements, public opinion and parliamentary pressures prevail on donor governments so as to prevent them from funding assistance programmes. Under these repressive circumstances, moreover, strong local movements for democracy and human rights often exist, calling for sanctions.

Where as a last resort donor countries must suspend bilateral aid, this should be done in such a way as to: avoid selectivity; follow transparent criteria; and avoid punishing the population. Equivalent aid should be channelled through national and international NGOs (presupposing that their activity would be tolerated).

It may be helpful to reflect on the consequences which flow from the application of sanctions. In the final analysis: Who suffers? Who gains? What is achieved? when such sanctions are applied. And regarding countries where human rights are persistently abused but sanctions are not applied, the same questions should be asked: What is achieved? What

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[3] The UNDP's *Human Development Report 1992* urges developing countries to make "massive investments in their people".

[4] Madeleine Ramaholimihaso, "Democracy, Development and Human Rights," Conference document CE/CMDH (93) 9, 25 January 1993, p. 5, section III.

destroyed? Who gains? Who suffers?

5. Human rights

Human rights are profoundly universal, not because some people say so, but because all people are created so, and it remains up to us to make human rights effectively (not just theoretically) universal. This means the really equal dignity of men and women in *all* the categories which otherwise differentiate human beings from one another.

The World Conference in Vienna comes a year after UNCED at Rio de Janeiro, where the interrelations and tensions between environment and development began to be faced. Vienna must build on Rio and in no way roll Rio back.

The Vienna Conference, occurring during the international year of Indigenous Peoples, should pay special attention to the right of peoples to self-determination in the face of not only external (colonialism, invasion) but also internal constraints.

Finally, consider this paradox: the policies prevailing in the world today call for the absolutely free circulation of capital, the relatively free circulation of ideas, but the restricted circulation of people. Would north-south solidarity not be much greater if people could circulate as freely as capital?

6. Practical suggestions for the World Conference on Human Rights

(1) The Conference should push for the ratification and application by all states of the Covenants on Human Rights and Protocols thereto and all international human rights treaties, and for the withdrawal of all reservations.

(2) Mechanisms should be set up to ensure regular reporting on the extent of the application of these norms and principles on the part of states.

(3) Public opinion must be mobilised in regard to the urgency of promoting human rights information and education as a necessary condition for securing genuine democracy, respect for human rights and development. Both states and NGOs should implement such educational projects, with local NGOs monitoring the performance of governments and international NGOs.

(4) An effective mechanism should be set up to monitor states of exception.

(5) An international fund or several regional funds (e.g., Africa, Eastern Europe) are proposed for the promotion of human rights:
- to coordinate the implementation of the various activities launched by states and NGOs; and
- to assure that states and NGOs cooperate as effectively as possible.

(6) With more than 40 million persons displaced from their own lands because of conflict, repression and civil war (about half of them being refugees and the rest internally

displaced), it is urgent that the rights of refugees and asylum-seekers be established and the mechanisms for their protection strengthened.

(7) Finally, the Vienna Conference will put the world's political will to the test.

One proposal is to seek a formula which links the pardoning of Third World debt with the promotion of the social rights of the most vulnerable in the debtor countries.

The second proposal is for countries of the developed world to pledge 1% of GNP[5] for third world development assistance, while third world countries make a commensurate budget pledge for human rights education, for the formation and reform of the judiciary, and for good governance.

* * *

[5] In 1969, the Commission headed by Lester B. Pearson recommended the 1% target for financial resource transfers and a separate 0.7% of GNP in official development assistance (UN Commission on International Development, *Partners in Development*, New York: Praeger, 1969); but very few donor countries have ever reached the latter, and most have never come close. The 0.7% pledge was renewed at UNCED.

III. OTHER ISSUES RAISED

In the course of a brief exchange in Plenary Session on the reports, one issue was raised which it had not been appropriate to raise in the context of the discussion groups. It concerned the participation of non-governmental organisations in the World Conference on Human Rights.

As independent expert Ian MARTIN pointed out, NGOs may attend and participate in the meeting in Vienna if they have consultative status with the Economic and Social Council, or if they have previously attended a regional preparatory meeting. Their attendance at the latter depends on their being NGOs active in human rights or development and having their headquarters in the respective region, and is subject to prior consultation with the governments concerned. The reference to "prior consultation with the governments concerned" was felt by many NGOs to be an unfortunate precedent, but fortunately had not led to any problems in the regional meetings convened in Tunis or San José, where there had been extensive participation by African and Latin American NGOs. It was hoped that this would also be the case for the meeting to be held in Bangkok for the Asian region.

However, in respect of Western Europe, Eastern Europe and North America, while there is no hesitation in principle from governments over the active participation of NGOs in the Conference process, the same possibilities of access for NGOs without consultative status simply do not exist. This results from the provisional decision of the governments of those regions not to hold formal regional preparatory meetings. Many NGOS from those regions are thus effectively denied the chance to participate.

Almost none of the non-governmental organisations now active in Central and Eastern Europe have had the opportunity to obtain consultative status with the UN's Economic and Social Council - a lengthy process at the best of times. But there are also many organisations in North America and Western Europe - in particular, women's organisations, organisations of indigenous peoples - who similarly do not have this status. They are also therefore effectively barred from any meaningful role in the Conference process.

The responsibility, Mr. Martin said, was very clearly with the governments concerned. They must now ensure, through the fourth session of the Preparatory Committee or other appropriate means, that a mechanism is found to make possible the participation of human rights organisations from *all* regions of the world.

He hoped this was an issue that could be given impetus from this present meeting.

Madame Catherine LALUMIERE, Secretary General of the Council of Europe, agreed with Mr. Martin on the importance of NGOs in this process. The current meeting was fortunate in having numerous NGOs among the most active participants. Here in the Council of Europe, one could not imagine a meeting of this kind without the presence and participation of NGOs, who are essential partners in the promotion and protection of human rights, as well as other fields. While the Council is an intergovernmental organisation, it works in close cooperation with the NGOs: they are an essential part of the democratic

process.

For this reason, the Secretary General agreed, it was essential that NGOs from all regions of the world be invited to take part in the Vienna meeting. This was not a question that could be resolved by the Council of Europe; it would have to be resolved by the Preparatory Committee for the World Conference. The Council would serve as the interlocutor of this conference before the Preparatory Committee and would communicate the need for all countries participating in the World Conference to take appropriate steps to ensure that the NGOs from their regions are invited. In particular, the member states of the Council of Europe would be asked to verify that all obstacles to such participation are removed, and reaffirm the legitimate role of NGOs in the international debate.

This matter was also taken up by General Rapporteur Mary ROBINSON in her concluding remarks (see below, page 48).

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IV. CONCLUSIONS BY THE GENERAL RAPPORTEUR, MARY ROBINSON, PRESIDENT OF IRELAND

Madame le Secrétaire Général,
Distinguished representatives,
Ladies and Gentlemen,

1. INTRODUCTORY REMARKS

It has been a special privilege for me to attend this conference and to act as your general rapporteur, especially at an interregional and inter-cultural meeting attended by experts from many parts of the globe and by a broad spectrum of the human rights community, comprising independent experts, NGOs and government representatives. I assume this role with enthusiasm for two reasons. Firstly, I am conscious that the moment is ripe for momentous change. The collapse of ideological barriers and the conversion of formerly authoritarian regimes to democracy means that not only has freedom become a reality to millions of people but that new opportunities for consensus as to the way forward for more effective ways of promoting and protecting human rights are within our grasp. There is a palpable feeling of good will - which was evident from the tone of the discussions - that compels us to the realisation that we must seize the day. At the same time, as Madame le Secrétaire Général has emphasised in her opening address, there is a sense of urgency. On the one hand, there are signs of disillusion and resignation in Eastern Europe after the dissipation of understandable euphoria. On the other, we are confronted with our own impotence to prevent the atrocities that are occurring on our doorstep in former Yugoslavia, or to combat the hunger, poverty, intolerance, religious extremism and violence which are ushering in the dawn of the 21st Century.

Secondly, I share with you a firm and tested belief in the power of ideas. Human rights are no longer the preserve of visionaries. They are pressing concerns which are vital and relevant to the lives of every human being. The brief history of the human rights movement teaches us that, notwithstanding the political difficulties, the omnipresent obstacles to change, the gross inequalities of wealth and the daily burden of oppression that surrounds us, international legal standards, by giving specificity to the concept of democracy, can, and do in fact lead to the improvement of peoples lives. It is already a quantum leap in international relations that today countries can no longer say that how they treat their inhabitants is their own business. The state's duty to protect human rights is not only owed to individuals within its jurisdiction but to the international community as a whole.

It is a tribute to the talents, skill and experience of the participants in the conference that such a rich tapestry of ideas and proposals has been woven over the last few days. I have interpreted my own role as that of a listener rather than that of an expert, whose task is to highlight the main proposals and insights that have emerged.

I find the metaphor of listening to be entirely appropriate for the occasion since listening to others is central to my own perception of what human rights are all about. We must listen very carefully to others. We have a duty to do so. We must listen especially to those whose voices are rarely adequately assertive - the poor, the marginalised and the

handicapped, or those NGOs that speak on their behalf. In so doing we demonstrate in the simplest but most effective manner possible our respect for the dignity of others - a requirement at the very root of human rights. If we do not show ourselves capable of doing so, our intellectual contribution to devising more effective responses to human rights issues risks being out of tune with the real dimensions of the problems facing us.

Several observations of a general nature must be made at the outset. The first relates to the fruit of the last World Conference in 1968 - the Proclamation of Teheran - since it provides an important indication of the magnitude of the tasks facing the international community. So many of the human rights problems identified in the Proclamation, in areas such as equality, gross violations, development and illiteracy, are still with us - some perhaps in a more virulent form. Such is the gap between precepts and practice, affecting many millions of people, it is tempting to succumb to despair. But this would not be an appropriate response. We must see the Proclamation as an important staging post in the growth of international concern for human rights which underscores the need for continuous re-appraisal of our efforts in a manner which is both self-critical and realistic. We should also acknowledge our achievements since 1945 in the form of standard setting and in the establishment of effective regional systems such as the European Convention on Human Rights, or the creation of preventive mechanisms such as the more recent European Convention for the Prevention of Torture which is steadily proving its influence in examining conditions of detention. But here also self-criticism and self-assessment are of the essence.

In the second place we should ask ourselves what we expect from the World Conference. Our expectations should be realistic. The Conference is not likely to take operational decisions which lead to instant improvement. Rather, it can create the condition for future changes by indicating a new direction or providing a fresh impetus. Hopefully it will lead to an increased priority for human rights in the United Nations. Most important of all, perhaps, it ought to be used by the entire human rights community in the widest sense as an occasion for stimulating public awareness about human rights. Rio must come to Vienna.

The patience and care that must be taken to instil these values in the public conscience has been described by Vaclav Havel, in a characteristically poetic manner, as a labour of love:

> "Je crois qu'il faut apprendre à attendre comme on apprend à créer. Il faut semer patiemment les graines, arroser avec assiduité la terre où elles sont semées et accorder aux plantes le temps qui leur est propre.
>
> On ne peut duper une plante, pas plus qu'on ne peut duper l'Histoire. Mais on peut l'arroser. Patiemment, tous les jours. Avec compréhension, avec humilité, certes, mais aussi avec amour."

2. PROPOSALS FOR ACTION TO BE TAKEN

But I must now be more specific about the fruits of our own labours. I perceive six areas where there is consensus as to decisions that should be taken by the World Conference.

First, it should re-affirm the basic principles of the universality and indivisibility of human rights, recognising once more that violations are of legitimate concern to the international community.

Second, it should re-affirm the principle that human rights are best protected by national institutions in the context of a legal and political culture supportive of human rights.

Third, it should examine ways of improving effective implementation of international human rights standards.

Fourth, it should recognise and endorse the role played by NGOs in the promotion and protection process.

Fifth, it should recognise that democracy, pluralism and respect for human rights are essential for social and economic development.

Sixth, it should examine appropriate means of upgrading the promotion and protection of economic, social and cultural rights.

Permit me to examine each point in turn with reference to the ideas and suggestions made during discussions.

A. Affirmation of universality and indivisibility

There is general agreement amongst participants that one of the most important aims of the World Conference will be to stress yet again the universality and indivisibility of human rights, and to resist claims that the minimum standards contained in human rights instruments are essentially Western in nature and not appropriate to countries with different religions and cultural traditions, particularly in the areas of women's rights, the rights of the child and the death penalty. There is a perceived need to re-assert and re-affirm the indispensable truth that the protection and promotion of human rights is a duty for all states, irrespective of their political, economic or cultural system, and to guard against the erosion of universally accepted standards in the name of regional "particularities". At the same time we should re-emphasise that violations of human rights are a legitimate concern of the international community.

The subversion of the principle of universality undermines the very foundations of the commitment of the international community to insist on minimum standards. Arbitrary detention, disappearances and violations of the rights of children do not contribute to feeding and clothing a nation or furthering a religious or cultural tradition. But as Dr. Tiruchelvam has highlighted in his paper, we must go further than rhetoric. We must go back to listening. More thought and effort must be given to enriching the human rights discourse by explicit reference to other non-Western religions and cultural traditions. By tracing the linkages between constitutional values on the one hand and the concepts, ideas and institutions which are central to Islam or the Hindu-Buddhist tradition or other traditions, the base of support for fundamental rights can be expanded and the claim to universality vindicated. The Western

world has no monopoly or patent on basic human rights. We must embrace cultural diversity but not at the expense of universal minimum standards.

B. Human rights are best protected by national institutions

Another development of great significance to the issues of this Conference is the women's movement world wide. We can learn from the ways in which women from the Eurocentric world and the world of the South have been coming to know one another. It is instructive to see how links have been established between networks of women's organisations, and even more instructive to note the institutional approaches adopted which are open, enabling and participatory. Women have been finding new ways of relating and new voices, defining new roles or redefining old ones in a manner which has a powerful message for all concerned with the promotion of human rights. The major themes of the women's movement - equality, development, violence against women, and peace - have undergone significant changes as the women's movements themselves have come to a deeper understanding of the implications of their concerns. In the process, men have often felt threatened - but not just men. Women have also felt threatened because change is always disturbing. The energies, the perspectives and the voices of women must be given a more central place and integrated fully into the human rights debate, not least to ensure the appropriate gender balance. It is through NGOs at the national and international level that the voice of women is increasingly heard.

It is also an important reality that international mechanisms for protecting human rights are subsidiary to the national system. Human rights are better protected at home subject to the system of outer-protection afforded by international bodies. We should, however, be careful to ensure that the existence of international mechanisms is not used as a pretext for failure to take appropriate measures at the national level.

States should ensure that effective national remedies exist in respect of human rights violations. The incorporation of treaty standards into national law is one important way of ensuring adequate judicial protection but also of contributing to the formation of a legal culture more sensitive to human rights concerns. Judicial protection is, however, not enough. It needs to be supplemented by a variety of national agencies each with a mandate of promotion and protection.

On the other hand, attention should be given to the nurturing of a human rights culture which is indispensable for the proper operation of national laws and institutions. The role of the actors of civil society, such as the media, trade unions, NGOs - so often the first targets of totalitarian regimes, was considered essential to the formation of this culture and ultimately to the extent of human rights awareness. Of special importance in this context is human rights education in schools and in professional training especially for officials responsible for key sectors such as prisons or the security forces. Assistance programmes for newly emerging democracies also play an important role.

The World Conference should give a new impetus to the national dimension and explore ways of generating financial support for education initiatives and for the widest possible distribution of basic human rights texts in the different languages.

C. Enhancing effective implementation of international human rights standards

As regards international machinery, ways must be found to encourage universal ratification of the UN Covenants and Protocols. This could involve giving more publicity to non-ratifying states or entering into a constructive dialogue to explore the reasons for their reticence. It was also considered vital to actively encourage States to withdraw reservations to these instruments.

Undoubtedly the World Conference provides an opportunity for improving the implementation of existing standards and the effectiveness of mechanisms. Particular attention must be devoted to considering ways and means of preventing violations from occurring. Failure to do so could deepen public scepticism of the role of the UN in this area. The most compelling weaknesses concern (1) the absence of an early-warning system to signal danger and of a focal point within the UN to which those who are close to a deteriorating situation can communicate information; (2) the inability of the UN organs to react speedily and effectively to urgent situations or gross, systematic violations of human rights. The absence of powers to order binding interim measures at both European and universal levels must also be urgently re-considered.

The idea was proposed that the time had arrived to create a High or Special Commissioner for Human Rights. He or she could be mandated to take investigating initiatives in situations of emergency as well as co-ordinating all of the UN's human rights activities and ensuring the integration of human rights issues in respect of other UN activities such as peace-keeping and peace-building. Although there was some dispute as to whether the mandate should cover both protection and co-ordination and whether the Commissioner should be located in Geneva close to infrastructures or in New York close to political decision-making, the idea of such an office was broadly supported.

A Special Commissioner or other office with similar functions could more efficiently address the needs for urgent action and greater co-ordination of resources. As such it should be given serious consideration. Yet its success is ultimately bound up with the need for a fundamental re-evaluation of the UN human rights budget. Less than 1% of the UN budget and 0.75% of its staff is disproportionately low for the ambitions of effective implementation in an era of increased responsibilities. It was alarming to learn, for example, that the UN Committee on Economic, Social and Cultural Rights has no expert staff and is serviced by one secretary. Clearly the financial and human resources made available must be significantly boosted. In particular, the UN Centre for Human Rights must be placed in a position where it can offer advisory services and technical assistance programmes without impinging on effective human rights monitoring.

Strong views have been expressed that violations of women's rights have been largely ignored by UN bodies, especially procedures for implementing standards prohibiting gender discrimination. A clear consensus has emerged from this meeting that the World Conference must adopt recommendations for reform of existing human rights mechanisms so that adequate attention can be given to violations of women's human rights in the areas that fall within their mandate. Special consideration should be given to violations that affect women disproportionately, such as rape or restrictions on women's legal capacity. It was felt

that there was urgent need for a UN Special Rapporteur on these pressing and neglected problems.

Finally, the recent events in former Yugoslavia involving ethnic cleansing and systematic rape have highlighted the need for the international community to send a clear signal to those responsible for gross human rights abuses that they will not be able to act with impunity. Further consideration should be given to the creation of an international criminal tribunal at regional or global level with powers not only to punish but also to grant reparation to victims. The Vienna Conference provides an important occasion to explore the relationship between human rights law and humanitarian law, with particular attention being given to methods of implementing the basic humanitarian standards set out in the Geneva Conventions and Protocols.

D. Recognition of the role played by NGOs

As has been remarked, the credibility of the World Conference will depend critically upon the extent to which it is open and responsive to the concern of NGOs from all regions. Indeed, the role of NGOs is a thread which links all the topics of this Conference. Their creative energy is a vital resource. The effectiveness of the work of the UN and other international organisations in this area will depend on the extent to which they take NGOs into a real partnership. Where would the promotion and protection of human rights be today without the skills, experience, dedication and commitment of the thousands of men and women working in these organisations? In a real sense they are the voice of the voiceless. They are also the major standard bearers for women's rights. But how can this partnership be improved on?

Three concrete proposals have emerged. The first is that NGOs enjoy the broadest possible participating rights in the World Conference. It is frankly disturbing to hear that NGOs from Eastern European and other countries, who do not enjoy consultative status and who have not, because of a Catch-22 situation, participated in a regional preparatory meeting, may have no *locus standi* in Vienna. Surely some way should be found of accrediting these organisations before the Vienna Conference if we are not to exclude a sizeable section of the associative community.

The second is that the expertise of NGOs on the ground be properly utilised by states in preparing their reports for submission to international bodies. They could, for example, be consulted in the preparatory phase or given the possibility of submitting comments to the national authority or more actively associated in the drafting of the report. The third proposal is that the crucial role of NGOs in monitoring human rights violations in the field (where many have lost their lives) be recognised by the adoption of the UN Declaration on "the protection of human rights defenders".

E. Development, democracy and human rights

Participants have stressed the need for the World Conference to continue the progress that has been made in the international community in asserting the basic principle that human rights must be central to development. There was consensus that the success of the World Conference depended on placing emphasis on people as the subject of rights and

on seeking ways to help the poorest sectors to exercise their freedom of expression and association so vital to political progress. Yet the implementation of this principle should be managed in a way which avoids counter-productive confrontation and further polarisation between North and South.

Views were expressed that developed countries should be seen to take economic, social and cultural rights more seriously. In addition, measures taken by donor governments because of deficiencies in the human rights record of developing countries should not be marked by selectivity and political expedience if their stand on the universality of basic principles is to be credible. Donor agencies should adopt operative guidelines which are based on transparent criteria. It should also be understood that credibility is related to the absence of disparity between domestic practices and international policies on human rights questions.

At the same time, the human rights record of developing countries, particularly in cases of widespread and systematic violations, is central to developmental assistance and may give rise to appropriate responses. The form that these responses take should not, however, be rigid. The donor community, in consultation with NGOs, must develop a framework of co-operation with the developing world which permits constructive dialogue and action on mutual concerns.

It was also strongly felt that international financial institutions such as the World Bank should integrate human rights concerns more consistently into their development projects. The effect of these projects on indigenous people's, minorities and trade union rights should be taken into account. The concepts of "good governance" and the rule of law should be related more precisely to a proper human rights discourse.

The notion of solidarity is central to these issues. But solidarity between North and South also arises in a more dramatic context to which we should already turn our minds. I understand that by the year 2000 the World Health Organisation envisages that there will be 40 million persons in the world who are HIV positive, an extremely high percentage of whom will be in developing countries. The demands on international solidarity with countries particularly affected will challenge all of us in a most compelling manner.

F. Upgrading economic, social and cultural rights

The World Conference must make a serious effort to upgrade the protection of economic, social and cultural rights. As Professor Alston has stressed, the Vienna Conference must sound the alarm bells "warning of the large-scale, deeply ingrained neglect of economic social and cultural rights over the past quarter of a century since Teheran". We have left far behind the cold-war ideological dispute as to the status of these rights. The interdependence and indivisibility of both sets of rights has been accepted and endorsed by the international community. How could it be otherwise? How can we proclaim our humanity and turn a blind eye on the squalor and misery of millions? But delivery on taking these rights seriously has been characterised by relative neglect and half-heartedness. These difficulties are also present within Europe where the European Social Charter of the Council of Europe has not been high on the list of state priorities, has not been ratified by all member States and has an over-cumbersome enforcement mechanism.

That we invest our energies in finding a realistic and imaginative way forward is imperative. The rights to food, health care, shelter and education are not negotiable. The death of 40,000 children every day from malnutrition is an affront to our conscience.

Numerous suggestions for improvement have been made involving the active promotion of ratification of the Covenant on Economic, Social and Cultural Rights, re-thinking and re-ordering the reporting system and upgrading the resources at the disposal of the Committee set up by the Covenant. These and other suggestions, particularly Professor Alston's ten-point plan of action, merit a more important place on our agenda.

But I will limit myself to highlighting two observations which should guide our thinking. First, there must be a concerted effort to ensure recognition of economic, social and cultural rights at the national and regional levels. If there is no solidarity at these levels, progress is not likely at the international level. They must be given the space to elbow their way more aggressively into our social and legal cultures. The startling observation has been made that there is practically no education about these rights. We have done little to inform people that they have them. Second, we should give careful thought to the reflection that the process of upgrading may require different skills and expertise to those normally involved in the judicial model of human rights implementation. It has been said that unless we widen the circle of actors normally involved in human rights work, who may feel ill at ease or ill-equipped in what has become a highly specialised and complex area, the prospects for undertaking the necessary reforms will be slim. The time has come to recognise that a new impetus needs not only political will and allocation of greater resources but the involvement of trained, more precisely targeted, multidisciplinary skills.

3. CONCLUSION

I cannot speak of development and human rights without evoking the misery and hardship that I encountered on a visit to Somalia in October last year. I witnessed, at first hand, human suffering, degradation and humiliation on a scale that defies adequate description. I saw children dying from malnutrition in their mothers' arms. I visited a Somali refugee camp in Northern Kenya where there were 60,000 people without a single latrine.

My inner sense of justice and equality was outraged at what I had seen. The world is capable of providing the 2,600 daily calorie allowance for every man, woman and child. We have food mountains and large tracts of land taken out of production. Are we not diminishing our own sense of humanity by failing to address the starvation and destitution of so many of our fellow human beings? How can we assert the universality of human rights by ignoring the life chances of millions of people?

This painful act of witness, on behalf of the people of Ireland who were deeply concerned at events in Somalia, has a potent relevance to our proceedings. It taught me that the problems of Somalia and other countries of Africa were of such a scale that they could not be left exclusively to the United Nations, the European Community or Governments, and that a people-to-people response was also necessary for effective action. An individual

assumption of responsibility and engagement on a large scale would surely impact on political priorities.

So too with human rights. There are natural limits to the effectiveness of national and international laws. We must strive to make them more effective to be sure. But at the end of the road it is our capacity as individuals to be concerned and moved by injustice that is the real driving force behind the human rights movement. We must ensure that the seeds of such individual responsiveness are firmly planted and nourished in our national cultures. This must be the goal of national education programmes. We must elevate the rights of others to a higher platform in our collective conscience.

In Somalia a distraught mother said to me "we need very basic things, we need the World to understand". Let us all listen very carefully to this simple human plea. And let us ensure that above the din of legal argument and contention others hear it too.

* * *

APPENDIX 1

LIST OF PARTICIPANTS

1. GENERAL RAPPORTEUR

H.E. Mary ROBINSON, President of Ireland;
and delegation: Mr. Nick ROBINSON, Mr. Peter RYAN, Ms Bride ROSNEY, Mr. Brian McCARTHY, Mr. Colm O'FLOINN, Ms Sile MAGUIRE

2. INTRODUCTORY SPEAKERS

Prof. Philip ALSTON; Mr. Ian MARTIN; M. Rodolfo MATTAROLLO; Ms Tanja PETOVAR; Mme Madeleine RAMAHOLIMIHASO; Dr. Neelan TIRUCHELVAM.

3. INDEPENDENT EXPERTS

Mr. Ernest M. AMETISTOV; Mrs. Ana BLANDIANA; Ms Ligia BOLIVAR; Mrs. Florence BUTEGWA; Dr. Andrew CLAPHAM; Prof. Stanley COHEN; Dr. Michael F. CZERNY, S.J.; Dr. Kamaleshwar DAS; Prof. Krzysztof DRZEWICKI; Dr. Nawal EL SAADAWI; Mr. Gustavo GALLON GIRALDO; Ambassador Roberto GARRETON MERINO; Prof. Yash GHAI; Prof. Dr. Bernhard GRAEFRATH; Mr. Thomas HAMMARBERG; Prof. Rosalyn HIGGINS; Dr. Hameeda HOSSAIN; Ms Hina JILANI; Prof. Virginia LEARY; Prof. Kathleen MAHONEY; Mr. Ahmed C. MOTALA; Me Bacre Waly NDIAYE; Mr. Abdul Hakim Garuda NUSANTARA; Mrs. Theodora OBIAGELE NWANKWO; Mr. Ali OUMLIL; R. P. Edwin PARAISON; Ms Margo PICKEN; Prof. Paulo Sergio PINHEIRO; The Hon. Mr. Justice TARNOPOLSKY; Prof. Theo VAN BOVEN; Mr. Francesc VENDRELL.

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5. COUNCIL OF EUROPE MEMBER STATES

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COUNCIL OF EUROPE OBSERVER STATE

Holy See: Mgr. Alain LEBEAUPIN, Mgr. Roland MINNERATH.

6. OTHER UNITED NATIONS MEMBER STATES

Albania: Mr. Dervish DUMI, Mr. Paulin KOLA; Armenia: Mr. Rafael PAPAYAN, Mr. Vahram ABADJIAN; Australia: Mr. Colin WILLIS; Azerbaijan: Mr. Shahin ALIYEV, Mr. Elman AGAYEV; Bahrain: Mr. Abdul-Hakim BU-HIJI; Bangladesh: Ambassador A.H. MAHMOOD ALI; Belarus: Prof. Leonid F.YEVNENOV, Dr. Valentin N. FISSENKO; Canada: M. Alan KESSEL; Colombia: Mme Ligia GALVIS; Croatia: Mr. Smiljan SIMAC, Prof. Budislav VUKAS; Czech Republic: JuDr. Roman POLASEK, JuDr. Jiri MALENOVSKY, JuDr. Jan CAPEK; Egypt: Mme Naéla GABR; Estonia: Ms Merle HARUOJA, Mr. Rait MARUSTE; Haiti: M. Willy LUBIN; India: Dr. L.M. SINGHVI, Mr. M.M. JACOB; Indonesia: Ambassador Soemadi D.M. BROTODININGRAT, Ms Perwitorini WIJONO; Iran (Islamic Republic of): Mr. Hamidreza HOSSEINI, Mr. Mohammed KHODADADI; Iraq: Mr. Riyadh Aziz HADI; Japan: M. Tetsuo ITO, M. Masaya SAGAWA; Kazakhstan: Mr. Askar O. SHAKIROV, Mr. Kairat I. ISAGALIEV; Kyrgyzstan: Mr. Tursunbek AKUNOV, Ms Elena SHYPLETSOVA; Latvia: Mr. Georgs ANDREJEVS, Mr. Andrejs PANTELEJEVS, Ms Kaija GERTNERE; Lithuania: Mr. Aidas PUKLEVICILIS, Mr. Rytis PAULAUSKAS; Mali: Maître Idrissa TRAORE, M. SALIFOU FOMBA; Mauritius: Ambassador Dhurma Gian NATH, Mr. GUNESSEE; Mexico: M. Eleazar RUIZ; Moldova: Mr. Iurie LEANCA, Mr. Alexandru ARSENI; Monaco: M. Jacques BOISSON; Morocco: M. Mohamed BENKADDOUR, Prof. Thami KHIARI; New Zealand: Ms Claire FEARNLEY; Oman: Mr. Saeed AL-AMRI; Philippines: Mrs. Victoria S. BATACLAN; Romania: M. Ion DIACONU, M. Ovidiu SINCAI, M. Ionel OLTEANU; Russia: Mr. Teimouraz RAMISHVILI, Prof. Vladimir TOUMANOV; Rwanda: Ambassadeur Jean-Marie Vianney NDAGIJIMANA; Senegal: M. Khaly Adama NDOUR, Mr. E. Abdoul Aziz NDIAYE; Singapore: Mrs. Mary SEET-CHENG, Miss Yee Woan TAN; Slovak Republic: Mr. Milan KOLLAR, Mrs. Viera STRAZNICKA, Mme Eva MITROVÁ; Slovenia: Mr. Vojislav SUC, Mrs. Biserka BAHOVEC VIDETIC, M. Andrej NOVAK; South Africa: Mr. François

POTGIETER; Thailand: Mr. Bhirat ISRASENA, Mr. Kullaphol PHOLLAWAN, Mr. Manasvi SRISODAPOL; Tunisia: M. Ali BEN MALEK; Turkmenistan: Mr. Murad NURYAGDIEV; Ukraine: Ms Nina KOVALSKA, M. Olexander I. YEMETS; United States of America: Ms Karen KRUGER, Ambassador Morris B. ABRAM, Ms Shirley BARNES; Uzbekistan: M. Tokhirjon MAMAJANOV, Prof. Akmal SAIDOV; Yemen: Ambassador Yahya GEGHMAN; Zimbabwe: Mr. Paddington GARWE, Ambassador Tichaona J.B. JOKONYA.

7. INTERNATIONAL AND REGIONAL ORGANISATIONS

UNITED NATIONS
Centre for Human Rights: M. Enayat HOUSHMAND; Committee on the Rights of the Child: Mr. Thomas HAMMARBERG, Mrs. Marta SANTOS PAIS; United Nations High Commissioner for Refugees: Ms Kate Jastram BALIAN; United Nations Educational, Scientific and Cultural Organisation: Mr. Vladimir VOLODIN; International Labour Office: Mr. André L. ZENGLER.

COUNCIL OF EUROPE
European Court of Human Rights: Judge Federico BIGI; European Commission of Human Rights: Prof. Carl Aage NORGAARD, Mr. Albert WEITZEL, Mr. Luis Fernando MARTINEZ RUIZ, Mrs. Jane LIDDY, Mr. Loukis LOUCAIDES; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: M. Claude NICOLAY; Governmental Committee of the European Social Charter: Mme Agnès LECLERC; Steering Committee for Human Rights: M. Guido RAIMONDI; Steering Committee for Equality between Women and Men: Mme Maria Regina TAVARES DA SILVA; Standing Conference on Local and Regional Authorities in Europe: Mr. Czeslaw TYLICKI; Non-Governmental Organisations Liaison Committee: Mme Marguerite BLANCKE.

ORGANISATION OF AFRICAN UNITY: AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: M. Ben SALEM HATEM.

EUROPEAN COMMUNITIES
Commission of the European Communities: Mme Daniela NAPOLI, Mme Marie-Odile DEN HARTOG, Mme Rose-Marie ZYBER; European Parliament: M. Paolo Maria FALCONE.

CONFERENCE ON SECURITY AND COOPERATION IN EUROPE
Office for Democratic Institutions and Human Rights: Mr. Jack ZETKULIC.

INTERNATIONAL COMMITTEE OF THE RED CROSS: M. Zidane MERIBOUTE.

8. OMBUDSMEN AND NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS from

Austria: Mr. Walter DOHR, Mr. Michael MAUERER; Denmark: Mr. Lars BUSCK; Finland: Ms Tuulikki PETAJANIEMI, Mr. Jacob SÖDERMAN; France: M. René VIAL; Italy: Mr.

Giovanni MANNONI; Spain: Mme Margarita RETUERTO BUADES; Sweden: Mr. Frank ORTON; United Kingdom: Mrs. Joan HARBISON, Mr. Denis CARSON.

9. INSTITUTES OF HUMAN RIGHTS

British Institute of Human Rights; Danish Centre of Human Rights; the Institute for Human Rights, Finland; International Institute of Humanitarian Law, Italy; Institut International des Droits de l'Homme, France; Ludwig Boltzmann Institute of Human Rights, Austria; Netherlands Institute of Human Rights; Raoul Wallenberg Institute of Human Rights, Sweden.

10. NON-GOVERNMENTAL ORGANISATIONS

Amnesty International; Association for the Prevention of Torture; Association pour la Sauvegarde des Familles et Enfants de Disparus; Centre for Prison Reform, Moscow; Christian Democrat International; Coalition for the Children of the Earth; Consultative Council of Jewish Organisations; Czech Helsinki Committee; European Association of Hospital Administrators; European Council of Police Trade Unions; European Federation of Community Radios; European Jewish Congress; European Nursing Group; European Organisation of Military Associations; European Union of Former Students of Catholic Teaching; European Union of Women; Federal Union of European Nationalities; Hungarian Helsinki Committee; International Alliance of Women; International Association of Democratic Lawyers; International Association of Judges; International Association of Lawyers; International Centre for European Trading; International Commission of Jurists; International Confederation of Free Trade Unions; International Confederation of Parents; International Confederation of Professional and Intellectual Workers; International Council of Jewish Women; International Council of Women; International Federation of the Action of Christians for the Abolition of Torture; International Federation for the Rights of Man; International Federation of Secondary Teachers; International Helsinki Federation for Human Rights; International Human Rights Law Group; International Lesbian and Gay Association; International Movement ATD Fourth World; International Rehabilitation Council for Torture Victims; International Research Centre for Human Rights (Moscow branch); International Society for Human Rights; Liberal International; Liga pro Europa; Minority Rights Group; Oxfam; Penal Reform International; Quaker Council for European Affairs; The Robert Schuman Institute for Europe; Russian Lawyers' Committee for Human Rights; Slovak Helsinki Committee; Soroptimist International; United Towns Organisation; University Women Europe; World Conference on Religion and Peace; World Organisation for the School as an Instrument of Peace; World Young Women's Christian Association; Young Lawyers' International Association.

11. SPECIAL GUESTS

President of the 47th regular session of the United Nations General Assembly: M. Stoyan GANEV.

The Carter Center of Emory University: Dr. Jamal BENOMAR.

Friedrich Naumann Foundation: Mr. Wolfgang HEINZ, Dr. Wolfgang BENEDEK.

12. SECRETARIAT

Madame Catherine LALUMIERE, Secretary General; Mr. Peter LEUPRECHT, Director of Human Rights; Mr. Michael O'BOYLE, Registry of the European Court of Human Rights; Ms Maggie NICHOLSON, Secretary of the Meeting.